

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

September 24, 2024

4th Regular Session, 2024

H. B. 23-119

A BILL FOR AN ACT

To amend the statutes regarding the recusal of judges and justices and to provide penalties for non-compliance; and for other purposes.

BE IT ENACTED BY THE 23RD NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:

1 **Section 1. Findings and Purpose.** The Legislature finds that the CNMI
2 Judiciary must uphold the highest standards of impartiality and integrity. Judges
3 and justices are obligated to avoid any appearance of bias, ensuring their
4 impartiality cannot be reasonably questioned. However, unnecessary recusals
5 undermine these duties and erode public trust in the judicial system. Unwarranted
6 recusals impose financial burdens on the CNMI government due to the need for
7 judges pro tempore, diverting resources from essential services. Thus, the
8 legislation introduces oversight by the Presiding Judge and Chief Justice to assess
9 the justification for recusals, ensuring compliance with 1 CMC Sections 3308 and
10 3309 and reinforcing accountability within the judiciary.

11 This legislation amends terminology from "disqualification" to "recusal" to
12 provide clarity and consistency in legal proceedings. It defines specific

1 circumstances requiring recusal, such as personal biases, prior involvement in
2 related matters, and financial interests, ensuring conflicts of interest are addressed
3 while preventing the transfer of responsibilities to external judges.

4 This legislation also provides courts with the authority to create their own
5 policies. It empowers courts to impose penalties or suspend judges for non-
6 compliance, serving as a deterrent against unjustified recusals. Additionally, the
7 CNMI Legislature is authorized to initiate impeachment proceedings for neglect of
8 duty, enhancing checks and balances.

9 In summary, this legislation strengthens judicial integrity, accountability, and
10 transparency by establishing clear recusal standards. It promotes economic
11 efficiency and upholds the rule of law within the CNMI, fostering public confidence
12 in the judicial system.

13 **Section 2. Amendment.** Title 1, Government, Division 3, Judicial Branch,
14 Chapter 3, The Judiciary, Section 3308, “Disqualification of Judges” of the
15 Commonwealth Code is hereby amended to read as follows:

16 “§ 3308. ~~Disqualification~~ Recusal of Judges.

17 (a) A justice or judge of the Commonwealth shall ~~disqualify~~, recuse himself
18 or herself in any proceeding in which his or her impartiality might reasonably
19 be questioned.

20 (b) A justice or judge shall also ~~disqualify~~, recuse himself or herself in the
21 following circumstances:

1 (1) Where he or she has a personal bias or prejudice concerning a
2 party, or personal knowledge of disputed evidentiary facts concerning the
3 proceeding;

4 (2) Where in private practice he or she served as a lawyer in the matter
5 in controversy, or a lawyer with whom he or she previously practiced law
6 served during that association as lawyer concerning the matter, or the judge or
7 such lawyer was or is a material witness concerning that matter;

8 (3) Where he or she has served in governmental employment and in
9 that capacity participated as counsel, adviser or material witness concerning
10 the proceeding or expressed an opinion regarding the merits of the particular
11 case in controversy. This shall include but not be limited to where a judge or
12 justice, including those in a pro tempore capacity, has previously presided over
13 or served as a member of an appellate court in a case that materially involves
14 the same parties or the same matter in controversy, regardless of whether that
15 court issued a decision or opinion on the merits;

16 (4) He or she, individually or as a fiduciary, or his or her spouse or
17 minor child residing in the household, has a financial interest in the subject
18 matter in controversy or in a party to the proceeding, or any other interest that
19 could be substantially affected by the outcome of the proceeding;

20 (5) He or she, or his or her spouse, or a person within the second degree
21 of relationship to either of them, or the spouse of such person:

1 (i) Is a party to the proceeding, or an officer, director, or trustee
2 of a party;

3 (ii) Is acting as a lawyer in the proceeding;

4 (iii) Is known by the judge or justice to have an interest that
5 could be substantially affected by the outcome of the proceeding; or

6 (iv) To the knowledge of the judge or justice is likely to be a
7 material witness in the proceeding.

8 (c) A judge or justice should inform himself or herself about his or her personal
9 and fiduciary financial interests, and make a reasonable effort to inform himself or
10 herself about the personal financial interests of his or her spouse and minor children
11 residing in the household.

12 (d) For the purposes of this section the following words or phrases shall have
13 the meaning indicated:

14 (1) "Fiduciary" includes such relationships as executor, administrator, trustee,
15 and guardian;

16 (2) The degree of relationship is calculated according to the civil law system;

17 (3) "Financial interest" means ownership of a legal or equitable interest,
18 however small, or a relationship as director, advisor, or other active participant
19 in the affairs of a party, except that:

1 (i) Ownership in a mutual or common investment fund that holds
2 securities is not a “financial interest” in such securities unless the judge or
3 justice participates in the management of the fund;

4 (ii) An office in an educational, religious, charitable, fraternal, or civic
5 organization is not a “financial interest” in securities held by the
6 organization; (iii) The proprietary interest of a policyholder in a
7 mutual insurance company, of a depositor in mutual savings
8 association, or a similar proprietary interest, is a financial interest in
9 the organization only if the outcome of the proceeding could
10 substantially affect the value of the interest; and

11 (iv) Ownership of government securities is a “financial interest” in the
12 issuer only if the outcome of the proceeding could substantially affect
13 the value of the securities.

14 (4) “Proceeding” includes pretrial, trial, appellate review, or other stages of
15 litigation.

16 (e) No justice or judge shall accept from the parties to the proceeding a waiver
17 of any ground for ~~disqualification~~, recusal, enumerated in subsection (b) of this
18 section. Where the ground for ~~disqualification~~, recusal arises only under subsection
19 (a) of this section, waiver may be accepted provided it is preceded by a full disclosure
20 on the record of the basis for ~~disqualification~~, recusal.

1 (f) In the Superior Court, the Presiding Judge shall make a determination as
2 to whether the recusal of the Associate Judge is justified and in compliance with 1
3 CMC sections 3308 and 3309. In the event that the Presiding Judge determines that
4 there is no justification or the recusal order is non-compliant, the Presiding Judge shall
5 order the judge to fully comply with the law.

6 (g) In the Supreme Court, the Chief Justice shall make a determination as to
7 whether the recusal of the Associate Justice is justified and in compliance with 1 CMC
8 sections 3308 and 3309. In the event that the Chief Justice determines that there is no
9 justification or the recusal order is non-compliant, the Chief Justice shall order the
10 justice to fully comply with the law.

11 (h) The CNMI Superior Court and Supreme Court shall promulgate
12 applicable court rules that authorize the Presiding Judge or the Chief Justice, in their
13 respective courts, to assess a personal penalty and/or officially suspend the judge or
14 justice “for neglect of duty” in the event of non-compliance with 1 CMC sections 3308
15 and 3309.

16 (i) The CNMI Legislature is expressly authorized to initiate and conduct
17 impeachment proceedings consistent with Article II, Section 7 of the CNMI
18 Constitution, for any judge or justice, including those appointed judge or justice in a
19 pro tempore capacity, in any case in the Commonwealth Superior or Supreme Court,
20 “for neglect of duty” for any reason for which there is just cause, including but not
21 limited to non-compliance with 1 CMC sections 3308 and 3309.”

1 **Section 3. Amendment.** Title 1, Government, Division 3, Judicial Branch,
 2 Chapter 3, The Judiciary, Section 3309 (a), “Disqualification Procedure” of the
 3 Commonwealth Code is hereby amended to read as follows:

4 “(a) “~~Disqualification~~ Recusal Procedure”. Whenever a justice or judge of
 5 the Commonwealth believes that there are grounds for his or her ~~disqualification,~~
 6 recusal, he or she shall, on his or her own initiative, recuse himself or herself
 7 and enter a written order of recusal in the record of the proceeding. If the parties
 8 are not present in court when the order is entered, the clerk shall immediately
 9 transmit a copy of the order to each party or attorney who has appeared in the
 10 action or proceeding. The written order of recusal shall make a full disclosure
 11 on the record of the factual and legal basis for the recusal.”

12 **Section 3. Severability.** If any provisions of this Act or the application of
 13 any such provision to any person or circumstance should be held invalid by a
 14 court of competent jurisdiction, the remainder of this Act or the application of
 15 its provisions to persons or circumstances other than those to which it is held
 16 invalid shall not be affected thereby.

17 **Section 4. Savings Clause.** This Act and any repealer contained herein
 18 shall not be construed as affecting any existing right acquired under contract or
 19 acquired under statutes repealed or under any rule, regulation, or order adopted
 20 under the statutes. Repealers contained in this Act shall not affect any proceeding
 21 instituted under or pursuant to prior law. The enactment of the Act shall not have

1 the effect of terminating, or in any way modifying, any liability, civil or criminal,
2 which shall already be in existence on the date this Act becomes effective.

3 **Section 5. Effective Date.** This Act shall take effect upon its approval by
4 the Governor, or its becoming law without such approval.

Introduction: 9/24/2024

Date: _____

Introduced by: _____

Rep. Marissa R. Flores

Reviewed for Legal Sufficiency by:

Joseph S. Say
House Legal Counsel

Handwritten signatures and initials, including the name 'KOBRE' and 'M. A. Co'. There are several scribbled-out signatures and initials, including one that appears to be 'M. A. Co' and another that looks like 'All'.