

the Court finds probable cause for Count V.

MOTION TO DISQUALIFY DEFENSE COUNSEL

Plaintiff filed a motion to disqualify Defense Counsel Marstella Jack, contending that her having Facebook friendship with the username Jaylo David brings her within Rule 3.7 of the Model Rules of Professional Conduct, which states that a “lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.”

Edmund has not filed an opposition to the government’s motion, which omission might be deemed consent to the motion. However, this Court must have good grounds for granting a motion, even one that is unopposed. Helgenberger, 17 FSM R. at 409.

This Court denies the motion on the following grounds: (1) the motion is premature, as there is no trial date and Rule 3.7 only applies to advocacy and testimony at trial, see Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 385, 386 (Pon. 1996); and (2) the motion fails to show that Ms. Jack is a necessary witness or that Ms. Jack would provide testimony relating to a contested issue, FSM MRPC R. 3.7. Therefore, the government’s motion to disqualify defense counsel is denied without prejudice.

CONCLUSION

Probable cause exists for Counts I-III and V of the Information. Count IV is hereby dismissed. The government's motion to disqualify defense counsel is denied without prejudice.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2021-502
)	
Plaintiff,)	
)	
vs.)	
)	
WU MING KUO (master of the vessel), LAI HSIU)	
SHENG (captain of the vessel), and CITYPRO)	
MANAGEMENT LIMITED (owner of the vessel)	
Queen Isabella 88),)	
)	
Defendants.)	
_____)	

ORDER DEFERRING CONSIDERATION

Larry Wentworth
Associate Justice

Decided: November 22, 2021

451
FSM v. Wu Ming Kuo
23 FSM R. 450 (Pon. 2021)

APPEARANCES:

For the Plaintiff: Jeffrey S. Tilfas, Esq.
FSM Assistant Attorney General
P.O. Box PS-105
Palikir, Pohnpei FM 96941

For the Defendants: Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonias, Pohnpei FM 96941

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HEADNOTE

Bail; Criminal Law and Procedure – Interpretation of Rules

Criminal Procedure Rule 43(c)(2) provides that the court, with the defendant's written consent, may permit the defendant to appear through counsel only when the prosecution is for a crime punishable by a fine or by imprisonment for less than one year. Rule 43(c)(2)'s purpose is that appearance in court may require considerable travel, resulting in expense and hardship not commensurate with the charge's gravity, if a minor infraction is involved and a small fine is eventually imposed, but when, the potential fines are quite substantial, ranging up to \$250,000 for some of the charges, it is difficult to consider that only minor infractions are involved. In such cases, the defendants' bail amounts may need to be increased, or some other assurances or security provided, before a Rule 43(c)(2) motion is granted. FSM v. Wu Ming Kuo, 23 FSM R. 450, 451 (Pon. 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

The defendants, Wu Ming Kuo and Lai Hsiu Sheng, have moved to appear only through counsel at trial. For this they rely on Criminal Procedure Rule 43(c)(2), which provides that the court, with the defendant's written consent, may appear through counsel only when the prosecution is for a crime punishable by a fine or by imprisonment for less than one year. The charges in this case are only punishable by fines. The charges do not carry possible jail sentences.

The purpose of Rule 43(c)(2) is that "appearance in court may require considerable travel, resulting in expense and hardship not commensurate with the gravity of the charge, if a minor infraction is involved and a small fine is eventually imposed." 3B CHARLES ALAN WRIGHT & PETER J. HENNING, FEDERAL PRACTICE AND Procedure § 721, at 10 (4th ed. 2013).

In this case, the potential fines are quite substantial, ranging up to \$250,000 for some of the charges. Under that circumstance, it is difficult to consider that only minor infractions are involved. In such cases the defendants' bail amounts may need to be increased, or some other assurances or security provided, before a Rule 43(c)(2) motion is granted.

NOW THEREFORE IT IS HEREBY ORDERED that the court denies the motion without prejudice. Wu Ming Kuo and Lai Hsiu Sheng may renew it if they address the court's concerns mentioned above.

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