

seem to be truthful," Order Denying Reconsideration at 1 (July 16, 2014), although this would be an adequate ground to deny an application for *in forma pauperis* status. We suggest that a hearing on the issue, while not necessarily required, might be helpful in this case. Ned's counsel says that he hopes to be paid by either the Public Defenders' Office or by his client, but has not been. We would be leery of awarding *in forma pauperis* status to someone who is paying private counsel, which may or may not be the case here.

VI. CONCLUSION

Accordingly, we affirm the trial court's guilty findings but vacate the convictions for all charges except the sexual assault charge, and we vacate the sentence and remand the matter for Ned to be re-sentenced in open court on the sexual assault charge. We further hold that when denying a stay of a criminal sentence pending appeal, the trial judge must "state orally on the record or in writing the reasons for the action taken." FSM App. R. 9(b). We recommend that the use of consolidated sentences be avoided and suggest that, in this case, a hearing on *in forma pauperis* status might have been helpful.

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FSM SUPREME COURT TRIAL DIVISION

SASAKI L. GEORGE,	)	CIVIL ACTION NO. 2013-2004
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CANNEY PALSIS, individually and in his capacity	)	
as Directing Attorney for Kosrae MLSC; LEE	)	
PLISCOU, in his capacity as the Executive	)	
Director of MLSC; and MICRONESIAN LEGAL	)	
SERVICES CORPORATION;	)	
	)	
Defendants.	)	

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ORDER DENYING DISQUALIFICATION

Ready E. Johnny  
Associate Justice

Decided: September 14, 2015

APPEARANCES:

For the Plaintiff:	Yoslyn G. Sigrah, Esq. P.O. Box 3018 Kolonias, Pohnpei FM 96941
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For the Defendants: Stephen V. Finnen, Esq.  
P.O. Box 1450  
Kolonia, Pohnpei FM 96941

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#### HEADNOTES

##### Courts – Recusal

A motion to disqualify a judge based on the judge's health is not a motion based on any of the grounds for disqualification listed in 4 F.S.M.C. 124, the FSM disqualification statute. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

##### Civil Procedure – Affidavits

A statement that is unsigned and not notarized does not constitute an affidavit. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

##### Civil Procedure – Affidavits

An affidavit must be made on personal knowledge and when it is not it is not competent evidence. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

##### Courts – Judges

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

##### Courts – Recusal

All motions to disqualify a judge under 4 F.S.M.C. 124 must be filed before the trial or hearing unless good cause is shown for filing it at a later time. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

##### Courts – Recusal

When a judge's health issues and physical limitations have been widely known or apparent for some time, including to the movant's counsel, a motion to disqualify a judge made only after an adverse final judgment has been rendered must be denied. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

##### Courts – Recusal – Procedure

Generally, any application to disqualify a trial judge must be filed at the earliest opportunity, and this principle is applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Just as a litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome, a litigant may not sit idly by and seek to disqualify a judge only after an adverse final judgment has been rendered. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

Judgment for the defendants in this case was entered on July 28, 2015. On August 13, 2015, Sasaki George filed Plaintiff's Motion to Disqualify Judge with supporting affidavit of counsel filed August 18, 2015, which duplicated an unsworn declaration and exhibit attached to the original motion. The defendants filed their Opposition to Motion to Disqualify Judge on September 4, 2015.

The movant seeks, after trial and the dismissal of his case, to disqualify me from further presiding over this trial division case. The motion is supposedly brought under 4 F.S.M.C. 124, but not based on any of the grounds for disqualification listed in that statute. Instead, the motion is based on my health and thus implies or asserts that I am not competent to sit as a judge on this or on any other case I have sat on (or participated in on an appellate panel) over the last three years.

The movant bases this on an alleged courtroom observation of me sometime during the past year ("recent month") by an anonymous physician of unknown qualifications, who provided a typewritten statement (Exhibit A attached to counsel's affidavit) listing or describing symptoms of a stroke or cerebral vascular accident. This statement is unsigned and not notarized and thus does not constitute an affidavit. Nor does it purport to be the anonymous person's affidavit. It is an exhibit attached to counsel's affidavit and is part of counsel's affidavit. An affidavit must be made on personal knowledge and when it is not it is not competent evidence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011). The exhibit is not made from counsel's personal knowledge and is not competent evidence.

Counsel's affidavit does contain some items based on counsel's personal knowledge. One is an instance during the three-day trial where counsel believes that I misheard or did not hear what opposing counsel said. From this, counsel seeks my disqualification "based on medical condition."

Counsel notes that my signature on court orders is by rubber stamp and "challenges the validity of a rubber stamped signature." Besides this, counsel further speculates that others have signed documents on my behalf "through rubber-stamped signature." Not only is this pure speculation, but it is also a falsehood. I have been signing, without any objection, documents by use of a rubber stamp for the last three years. The rubber stamp is kept in my personal possession and I am the only person who uses it. I personally affix my rubber-stamped signature to each and every document that I sign. No one but me personally, affixes my rubber-stamped signature on documents. Just because I rubber stamp my signature, it does not mean that it is not my own signature or that it is not a valid signature. A signature is defined as "[a] person's name or mark written by that person or at the person's direction," or "[a]ny name, mark, or writing used with the intent of authenticating a document – [a]lso termed *legal signature*." BLACK'S LAW DICTIONARY 1507 (9th ed. 2009) (emphasis in original) (citations omitted); see also Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

My health issues and physical limitations have been widely known or apparent for some time, including to the movant's counsel. The motion to disqualify is untimely. Although, since none of the statute's listed grounds are relied upon, this motion may technically not be a motion to disqualify under 4 F.S.M.C. 124, all motions to disqualify a judge under that statute must "be filed before the trial or hearing unless good cause is shown for filing it at a later time." 4 F.S.M.C. 124(6). The movant has not even attempted to show good cause why the disqualification motion was not filed before trial but instead was made only after trial and after an adverse decision to move for my disqualification.

Generally, any application to disqualify a trial judge must be filed at the earliest opportunity, and this principle is applied against a party who, having knowledge of the facts constituting a