TIMOTHY UEHARA. a.k.a. TERO UEHARA,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 09-001
Criminal Case No. 07-036

Supreme Court, Appellate Division
Republic of Palau

Decided: April 29, 2010

[1] **Appeal and Error**: Standard of Review

Interpretation of the perjury statute is a question of law that the Appellate Division reviews *de novo*.

[2] **Criminal Law**: Perjury

Under Palau's perjury statute, the term "legal substitute" refers to a substitute for an oath, not for the requirement that the defendant swear to the oath (or legal substitute) before a competent person. One may be guilty of perjury by taking either an oath or a legal substitute, but whichever phrase applies, it must have occurred before a competent person.

[3] **Statutory Interpretation:** Ambiguity

The first step in interpreting a statute is to refer to its plain language. If that language is clear and unambiguous, the Court need not move beyond it. If the statute is not

susceptible of more than one construction, courts should not be concerned with the consequences resulting from its plain meaning.

[4] **Criminal Law:** Perjury

The most common definition of perjury requires proof of (1) an oath or legal substitute therefor; (2) authorized or required by law; (3) taken before a competent person or tribunal; (4) a false statement of material fact; and (5) knowledge of the falsity.

[5] **Criminal Law:** Perjury

To be guilty of perjury under a statute requiring an oath "taken before" a competent person, one typically must have taken the oath or legal substitute *in the actual presence* of such person.

[6] **Criminal Law:** Perjury

Courts generally hold that the taking of an oath is a personal matter, and it cannot be taken or subscribed in a representative capacity. It is an act which may not be delegated to an agent, for by its very definition, an oath must be administered personally.

[7] **Criminal Law:** Perjury

For purposes of perjury, a valid oath typically cannot be administered by telephone.

[8] **Criminal Law:** Perjury

To convict one of perjury under 17 PNC § 2601 based on a written form, the government must at least establish that the defendant signed an oath or legal substitute therefor in the physical presence of a person competent to administer it.

[9] **Criminal Law:** Perjury

Public official's signatures "under penalty of perjury" were not sufficient to establish guilty of perjury, without proof that defendant took an oath "before" a competent person.

[10] **Criminal Law:** Misconduct in Public Office

The three elements of misconduct in public office, under 17 PNC § 2301, are: (1) status as a public official; (2) an illegal act; (3) committed under the color of office.

[11] **Criminal Law:** Information

A criminal information is sufficient if it contains all of the essential elements of the offense charged and fairly informs the accused of the charges against him which he must defend. The Court reviews the sufficiency of an information in light of practical rather than technical considerations.

[12] **Criminal Law:** Multiplicity and Duplicity of Information

An information is duplicitous where a single count charges the defendant with more than one criminal offense. A duplicitous information is troublesome because it may be unclear whether a subsequent conviction rests on merely one of the offenses within a single count and, if so, which one. This implicates concerns of double jeopardy and proper notice of the charges against the defendant.

[13] **Criminal Law:** Multiplicity and Duplicity of Information

An information listing three separate counts of perjury and three separate counts of misconduct in public office in two broad paragraphs was not duplicitous where each paragraph was titled and numbered accordingly, listed three dates for the respective counts, and stated three separate documents upon which each charge was based.

[14] **Special Prosecutor**

The Office of the Attorney General and the Special Prosecutor have concurrent jurisdiction to prosecute public officials. The Special Prosecutor's authority to prosecute public officials is not limited to cases where the Attorney General has a conflict in interest.

[15] **Criminal Law**: Sufficiency of the Evidence

The Appellate Division reviews a challenge to the sufficiency of the evidence for clear error and defers to the Trial Court's opportunity to assess the credibility of witnesses. The Court asks only whether there is evidence, viewed in a light most favorable to the prosecution, from which a rational trier of fact could have found defendant guilty beyond a reasonable doubt. If so, the Court will not disturb the conviction even if it might have reached a different conclusion in the first instance.

Counsel for Appellant: F. Randall Cunliffe

Counsel for Appellee: Office of the Special Prosecutor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Supreme Court, Trial Division, Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Timothy Uehara, a former Koror State legislator, appeals the Trial Division's judgment finding him guilty of three counts of perjury and three counts of misconduct in public office. During his tenure, Uehara purportedly leased property that he did not own and failed to include his rental income on financial disclosure forms, as required by the Code of Ethics Act. Uehara now challenges his convictions and sentence. After considering Uehara's various arguments, we find error in the perjury convictions, but we uphold his convictions for misconduct in public office.

BACKGROUND

Uehara was a member of the Koror State Legislature from 2000 until 2005, during which time he also co-owned the Four Seasons, a business located on T-Dock in Meketii, Koror. The property upon which the Four Seasons operated was held in trust by the Koror State Public Lands Authority (KSPLA), which purportedly leased it to Uehara and his co-owners. No written lease was discovered or produced at trial. Regardless of whether a lease existed, Uehara, while serving as a public official, leased the property to various tenants, collecting monthly rental payments that ultimately totaled approximately $22,000.

Uehara did not remit any of this income to the KSPLA, nor did he disclose to the tenants that he was not the true owner of the property or that he did not have a written lease from the KSPLA.

As a Koror State legislator, Uehara was subject to the Code of Ethics Act and was required to file an annual financial disclosure statement with the Ethics Commission. *See* 33 PNC § 605(b), (c). The statement demands that the public official disclose his financial interests, including a list of "Assets and Income Sources totaling $500 or more," for the previous reporting period. *Id.* § 605(c); Financial Disclosure Statement, Form EC-1 (Part I). Uehara filed his first statement on January 17, 2001, reporting his financial status for the year 2000. Uehara stated that he owned a house and three boats but listed no additional income. In a separate section, he indicated that he had an ownership interest in the Four Seasons. In three subsequent short-form disclosure statements[1]—filed on January 15, 2002, January 28, 2003, and November 14, 2005, respectively—Uehara certified that he had no new reportable sources of income and therefore no changes to his 2000 statement.

Uehara signed, or authorized an Ethics Commission employee to sign, each of the four disclosure statements. Preceding the signature line on each form is the following language:

> I certify under penalty of perjury that I have used all reasonable diligence in the preparation of this statement, and the information on this form and all attached statements are true, complete, and correct to the best of my knowledge.

See Financial Disclosure Forms EC-1, EC-1-A.[2] Uehara did not sign the three short-form disclosure statements before a notary public, an Ethics Commission employee, or anyone else. For his 2002 form, Uehara, by telephone, directed a Commission employee, Kalista Decherong, to sign on his behalf. For his 2003 and 2005 forms, Uehara signed the documents at an earlier time and later submitted them to the Commission with his signature already on them.

The government subsequently discovered that Uehara's disclosure forms were inaccurate and incomplete. Specifically, Uehara did not report the $22,000 of rental income received from leasing the property on T-Dock from 2001 to 2004. On February 20, 2007, the Special Prosecutor ("SP") charged Uehara with a variety of offenses stemming from the above-described conduct. The SP charged Uehara with forty-three counts of grand larceny, alleging that he unlawfully stole property from his tenants, who unwittingly paid him rent for the KSPLA property. The SP also alleged that Uehara

[1] If a public official's financial interests for a reporting period are identical to those reported on the prior disclosure statement, he or she may file a shorter form certifying, under penalty of perjury, that his or her financial interests have not changed. 33 PNC § 605(d); *see also* Financial Disclosure Statement Optional Form, Form EC-1-A.

[2] This language closely tracks the language in the Code of Ethics Act, 33 PNC § 605(f).

obtained the rental income by misrepresenting his ownership and therefore charged him with forty-three counts of false pretenses/cheating. Finally, the SP charged Uehara with three counts of perjury and three counts of misconduct in public office—one count of each crime for each of the three incomplete disclosure statements he submitted to the Ethics Commission.

Uehara's trial began on February 19, 2008. After the SP presented its case-in-chief and the court adjourned for the day, Uehara suffered a mild stroke and required medical attention. The court continued the trial indefinitely. During the interim, the SP resigned and left Palau. Uehara moved to dismiss the case because of the inevitable delay in replacing the SP. In response, the Office of the Attorney General ("AG") notified the court that it intended to take over Uehara's prosecution. On May 28, 2008, the court denied Uehara's motion to dismiss and, noting that the trial had already commenced, permitted the AG to represent the Republic.

After additional continuances related to Uehara's health, the trial resumed on January 22, 2009. On January 23, the trial court acquitted Uehara on all counts of grand larceny and false pretenses, but it convicted him of perjury and misconduct in public office. The court found that Uehara knowingly filed three false disclosure statements in violation of the Code of Ethics Act and contrary to the written oath on the forms. The court then sentenced Uehara to six years in prison for each conviction, to run concurrently, with all but twelve months suspended, and it assessed a $10,000 fine for each count. Uehara now appeals.

ANALYSIS

Uehara presents numerous issues on appeal, attacking both his convictions and his sentence. He argues that the information against him was defective, that the court should not have permitted the Republic's change of counsel, that his convictions for perjury were improper, that the convictions were not supported by the evidence, and that the court made additional errors of law. After a thorough review of this case, the Court finds error in Uehara's perjury convictions and therefore addresses that issue first. We reject the remainder of his arguments.

I. Perjury Convictions

[1] The trial court convicted Uehara of three counts of perjury under 17 PNC § 2601 for knowingly falsifying his three short-form disclosure statements. Uehara avers that the Republic did not prove the elements of perjury under § 2601 beyond a reasonable doubt. Specifically, he argues that he did not take an oath or affirmation in the presence of a person competent to administer it. The Republic, however, asserts that submitting a false financial disclosure statement, signed "under penalty of perjury," is sufficient to support his conviction. Interpretation of the perjury statute is a question of law that this Court reviews *de novo*. *Lin v. Republic of Palau*, 13 ROP 55, 57 (2006); *Rechucher v. Republic of Palau*, 12 ROP 51, 53 (2005).

[2] We begin with Palau's perjury statute, which reads as follows:

> Every person who *takes an oath or any legal substitute therefor before a competent*

> *tribunal, officer, or person*, in any case in which a law of the Republic authorizes an oath or any legal substitute therefor to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, deposition, or certificate by him subscribed is true, and who wilfully and contrary to such oath or legal substitute therefor states or subscribes any material which he does not believe to be true, shall be guilty of perjury, and upon conviction thereof shall be imprisoned for a period of not more than five years.

17 PNC § 2601 (emphasis added). The question before this Court is whether simply signing a financial disclosure form and submitting it to the Ethics Commission constitutes "taking" an oath or legal substitute therefor[3] "before" a competent person under § 2601.

[3] The first step in interpreting a statute is to refer to its plain language. *Lin*, 13 ROP at 58. If that language is clear and unambiguous, the Court need not move beyond it. *Id.* (citing *Senate v. Nakamura*, 7 ROP Intrm. 212, 216 (1999)). As this Court noted in *Lin*, if a statute is not susceptible of more than one construction, courts should not be concerned

[3] Although the information charging Uehara with perjury spoke only of an oath, the Republic argued on appeal that the financial disclosure statement should be construed as a "legal substitute." This argument, however, does not alter the Court's inquiry of whether the words to which Uehara was required to swear—whether called an oath, affirmation, or something else—was taken "before a competent tribunal, officer, or person." Under a plain reading of § 2601, the term "legal substitute" refers to a substitute for the *oath*, not for the requirement that the defendant swear to the oath (or legal substitute) "before a competent . . . person." The statute's term "therefor" refers directly back to the term "oath," and both terms precede the phrase "before a competent tribunal, officer, or person." Further, the statute later uses the same language on two occasions: "in any case in which the law of the Republic authorizes an *oath or legal substitute therefor to be administered*," and "contrary to such *oath or legal substitute therefor*." In both instances, this phrase again joins the two terms, with "therefor" referring back to the term "oath" in the same manner as the first. The plain meaning of this language is that one may be guilty of perjury by taking either (a) an oath or (b) a legal substitute for the oath, but whichever phrase applies, it must have occurred "before" a competent person. Thus, the government's argument on this point does not affect the remaining analysis in this case, which relates to the term "before" in § 2601.

with the consequences resulting from its plain meaning. *Id.*

According to the express wording of § 2601, one must take an oath or legal substitute "before" a competent person to be guilty of perjury. Turning to the common usage of the term, Webster's Dictionary defines "before" as "in the presence of"; "in sight or notice of"; "face to face with"; and "confronting." *Webster's Third New Int'l Dictionary* 197 (1981). This usage, as applied to § 2601, would require one to appear and take an oath or legal substitute in the presence of another person to be guilty of perjury.

[4] This interpretation of § 2601 is consistent with a wealth of legal authority concerning standard perjury principles and U.S. perjury statutes with language similar to § 2601.[4] The most common definition of perjury, which includes the same elements under Palau's statute, requires proof of (1) an oath or legal substitute therefor; (2) authorized or required by law; (3) taken before a competent person or tribunal; (4) a false statement of material fact; and (5) knowledge of the falsity. 60A Am. Jur. 2d *Perjury* § 6 (2003); *see also* 17 PNC § 2601.

[5] To meet these elements, the defendant must have taken the oath or legal substitute in the actual presence of a competent person. The crux of a perjury conviction is that the defendant violated a solemn, formal oath or affirmation—something weightier than a signature. Perjury is a serious crime, and requiring an oath before a competent person is not a mere technicality. Its purposes are "to impress upon the swearing individual an appropriate sense of obligation to tell the truth, and to ensure that the affiant consciously recognizes his or her legal obligation to tell the truth"; to bind the conscience of the swearing individual; and to permit prosecution for perjury if the statements are false. 58 Am. Jur. 2d *Oath and Affirmation* § 5 (2002). To further these purposes, the "taking" of the oath may vary in form but at minimum requires "some unequivocal and present act, in the presence of an officer to administer the oath, whereby the affiant consciously takes on himself the obligation of the oath." 60A Am. Jur. 2d *Perjury* § 9.

Therefore, a perjury statute mandating an oath "taken before" a competent tribunal or person (such as § 2601) typically requires that

[4] The federal perjury statute in the United States, as well as certain "false declaration" statutes in various states, punish false statements made in broader circumstances than those encompassed by statutes like § 2601. *See* 18 U.S.C. § 1621. Specifically, the federal statute and the laws of many states expressly provide that a false written statement signed "under the penalties of perjury" is sufficient to render one guilty of perjury even if it is not notarized or otherwise properly sworn. *See id.* § 1621(2) (referring to 28 U.S.C. § 1746); *see also, e.g.*, *Pfeil v. Rogers*, 757 F.2d 850 (7th Cir. 1985); *Dickinson v. Wainwright*, 626 F.2d 1184 (5th Cir. 1980); *United States v. Zonca*, 94 F. Supp. 2d 1127 (M.D. Fla. 1999), *aff'd* 208 F.3d 1012 (11th Cir. 2000); *People v. Ramos*, 430 Mich. 544 (1988) (noting that the federal perjury statute and laws in California, Washington, and Wyoming are broader than Michigan's and permit prosecution for perjury for a written declaration "under the penalties of perjury"). In each of these cases, however, the basis of the conviction was the federal or state "false declaration" statute. Palau has no equivalent provision.

the false statement must "be given under an oath actually administered," which in turn means that "the declarant must take upon himself or herself the obligations of an oath *in the presence* of an officer authorized to administer it." 58 Am. Jur. 2d *Oath and Affirmation* §§ 6, 17 (emphasis added). This is true under standard U.S. perjury law,[5] as well as cases in many states holding or suggesting that, under a statute such as Palau's, a document not signed in the presence of a person authorized to give an oath will not sustain a perjury conviction.[6]

In recent times, some courts have excused certain formalities associated with a sworn oath (such as swearing on a Bible or raising one's right hand), but a court may not disregard the lack of an oath or affirmation before a competent person altogether. As a New York court held long ago, a statute providing that "[i]t is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner" applied only where *some oath* was given; it does not apply where no oath was administered, for the statute "cannot cure that which never had life enough to be sick." *People ex rel Greene v. Swasey*, 203 N.Y.S. 22, 25 (Sup. Ct. 1924).

[6, 7] Consistent with these rules, courts generally hold that "[t]he taking of an oath is a personal matter, and it cannot be taken or subscribed in a representative capacity. It is an act which may not be delegated to an agent, for by its very definition, an oath must be

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[5] *See* 60A Am. Jur. 2d *Perjury* § 9 ("The oath, a necessary basis for a prosecution for perjury, must be solemnly administered by a duly authorized officer. . . . [T]here is a valid oath sufficient to form the basis of a charge of perjury when there is some unequivocal and present act, *in the presence of an officer authorized to administer the oath*, whereby the affiant consciously takes on himself the obligation of the oath." (emphasis added)); *id.* § 11 ("In order to support a perjury charge, the oath under which false testimony is given must have been administered by a person having lawful authority to do so . . . ."); *id.* § 75 ("Under both federal and state law, proof of the charge of perjury requires that sufficient evidence be offered for the jury to find, beyond a reasonable doubt, that *an oath was administered to the defendant* by a duly authorized officer before he or she gave the allegedly false testimony." (emphasis added)).

[6] *See, e.g.*, *Harrison v. State*, 923 P.2d 107, 108-10 (Alaska Ct. App. 1996) (false affidavit, not signed before a notary, could not support perjury conviction under a statute requiring the statement to be "knowingly given under oath or affirmation," but it *did* suffice for conviction under a separate statute providing for perjury if a statement is "knowingly given under penalty of perjury"); *People v. Viniegra*, 130 Cal. App. 3d 577, 584-86 (1st Dist. 1982) (holding, in a similar case to this one, that a false welfare application, signed "under the penalties of perjury" but not in the presence of a notary or authorized officer, could constitute a violation of California's welfare laws but was *insufficient* to demonstrate a false swearing or oath for perjury); *State v. Johnson*, 553 So.2d 730, 723-33 (Fla. App. 2d Dist. 1989) (holding that statutory requirement of a "sworn statement" requires administration of oath, and simply signing a document under penalty of perjury does not suffice); *Mickelsen v. Craigco, Inc.*, 767 P.2d 561, 564 (Utah 1989) (holding that a valid verification must include a written oath or affirmation and be signed by the affiant in the presence of a notary or other authorized person); *see also* 51 A.L.R. 840, *Formalities of administering or making oath* (listing many similar cases).

administered personally." 58 Am. Jur. 2d *Oath and Affirmation* § 9. A natural extension of this principle is that a valid oath, even for a sworn affidavit similar to the Ethics Commission form, typically cannot be administered by telephone. *Id.* § 18. "[T]here must be present the officer, the affiant, and the paper, and there must be something done which amounts to the administration of the oath." *Id.* (quotations omitted).

[8] In sum, the common usage of the term "before" in Palau's perjury statute is consistent with the prevailing interpretations of similar U.S. perjury statutes that require an oath to be "taken before" a competent person. We therefore hold that to convict one of perjury under 17 PNC § 2601 based on a written form, the government must at least establish that the defendant signed an oath or legal substitute therefor *in the physical presence* of a person competent to administer it. Such a requirement ensures that perjury remains a serious crime reserved for the type of cases contemplated by the legislature, where defendant violates the solemn oath or its legal substitute.

Turning to the facts of this case, the information charging Uehara asserted that he committed perjury in violation of § 2601, but Uehara did not "take" an oath or legal substitute therefor "before" anyone. First, there was no evidence that Uehara appeared and signed his disclosure statements before a notary public, an Ethics Commission employee, or anyone else who could acknowledge his written affirmation. All evidence was to the contrary. Kalista Decherong, an Ethics Commission employee, testified that she signed Uehara's form filed on January 22, 2002. She stated that Uehara, over the telephone, "asked me to do this for him 'cause he was away a [sic] the Babeldaob." (Tr. 44). As to the 2003 and 2005 forms, the only testimony concerning an oath was as follows:

> Q. [Counsel for Uehara] That[7] was not executed in front of you, was it?
> A: [Decherong] Yes it was 'cause I received it here.
> Q: Wasn't this sent over to you just with the signature on it and you filled the rest of it in?
> A: Yes, 'cause I asked him and he told me on the phone that 'I don't have any new business or anything.' So I said, we . . . you have to get your form and do it before February 1st.
> Q: And so this [form] came to you with the signature on it and then you filled out the rest of the form?
> A: Yes.
> Q: And then Exhibit 42,[8] is that the same thing, the form came to you with the signature on it and you filled out the rest of the form?
> A: Yea.

[7] Uehara's counsel was referring to Exhibit 41, which was Uehara's 2003 disclosure statement.

[8] Exhibit 42 was Uehara's 2005 disclosure statement.

(Tr. 45.) Furthermore, there was no notary seal or a signature by an Ethics Commission employee, attesting that Uehara in fact acknowledged the language on the forms that he signed.

For a crime as serious as perjury, this evidence is not sufficient to prove that Uehara took an oath "before" a competent person. Uehara signed the 2003 and 2005 disclosure statements in his own time, in the absence of a person competent to administer an oath, and then submitted them to the Ethics Commission. And the evidence is certainly insufficient for perjury concerning Uehara's 2002 form, which he did not even sign personally. The Republic presented no evidence that Uehara even knew he was authorizing his signature "under penalty of perjury" on the 2002 form. At oral argument, the Republic argued that a public official should not be allowed to escape criminal penalty for otherwise wrongful conduct merely by asking someone else to sign his form. This Court agrees. But here Uehara was charged with *perjury*, not simply with filing a false disclosure statement.

The Code of Ethics Act provides criminal penalties for "any person who knowingly or willingly violates any provision" of the Act. 33 PNC § 611(a). The Ethics Act does not require a public official to take an oath before a competent person. It requires only that the official verify that the information he discloses is accurate, to the best of his knowledge, and he violates the Act by knowingly submitting a false statement to the Commission. The trial court found ample evidence that Uehara knowingly omitted information from his three disclosure forms and therefore violated the Ethics Act. The Republic, however, did not charge Uehara with violating the Ethics Act. The Court must therefore analyze Uehara's conduct under the charged perjury statute, which expressly requires an oath taken before a competent person.

[9] In this case, the Republic's failure to prove that Uehara took an oath or legal substitute therefor "before" a competent person dooms his perjury convictions. The Republic's argument that signing a document "under penalty of perjury" is, by itself, sufficient to sustain a perjury conviction runs counter to substantial legal authority concerning statutes like § 2601. Furthermore, the trial court made no factual findings concerning the oath or legal substitute required by § 2601, nor did it address whether Uehara took such an oath or whether the person who allegedly administered it was "competent."[9] These are essential elements of perjury under § 2601. Instead, the trial court framed the perjury question only as whether the Republic met "each element of proof beyond a reasonable doubt that Defendant did submit false financial disclosure statements to the Ethics Commission on each of the three disclosure forms." Crim. Case No. 07-036, Decision at 5 (Tr. Div. Jan. 23, 2009). These are not the elements of perjury; these are the elements of violating the Ethics Act.

The Court holds that Uehara's convictions of three counts of perjury were in

[9] At oral argument, Uehara focused most of his efforts on asserting that an Ethics Commission employee should not be considered a "competent person" under the perjury statute. Because we resolve this case on other grounds, we need not address this issue and express no opinion on it.

error. Specifically, there was no proof that Uehara took any oath or legal substitute therefor "before a competent tribunal, officer, or person." We must therefore reverse his perjury convictions.

II. Misconduct in Public Office Convictions

The Court will next address the impact of reversing Uehara's perjury convictions on his remaining convictions for misconduct in public office. Uehara argues that the Court must overturn these convictions because the perjury convictions were the sole bases for them. We disagree and uphold his convictions under 17 PNC § 2301.

[10] The Palau National Code defines the crime of misconduct in public office as follows:

> Every person who, being a public official, shall do any illegal acts under the color of office . . . shall be guilty of misconduct in public office . . . .

17 PNC § 2301.[10] Therefore, the three elements of the offense are: (1) status as a public official; (2) an illegal act; (3) committed under the color of office. The commonly accepted definition of "illegal" is "contrary to or violating a law or rule or regulation or something else . . . having the force of law." *Webster's Third New Int'l Dictionary* at 1126; *see also Black's Law Dictionary* 763 (8th ed. 2004) (defining illegal as "[f]orbidden by law; unlawful").

In its information charging Uehara with misconduct in public office, the SP alleged all three elements of the offense: that he (1) was a Koror State legislator at the time of the alleged misconduct; (2) was acting under the color of that office, and (3) committed illegal acts. Concerning the last element, the SP alleged that Uehara committed illegal acts in two ways: perjury and violation of the Ethics Act. Specifically, the information stated that Uehara "made false statements in financial disclosure statements submitted to the Ethics Commission in violation of 17 PNC § 2601 *and* 33 PNC § 605(f), all in violation of 17 PNC § 2301." (emphasis added). As mentioned above, § 605(f) requires a public official to verify "that he has used all reasonable diligence in preparing the statement and that to the best of his knowledge the statement is true and correct." By charging Uehara with misconduct in public office based on his violations of *both* 17 PNC § 2601 *and* 33 PNC § 605(f), the Republic needed only to prove that he violated one of the two statutes, in addition to the remaining elements of § 2301. The information put Uehara on notice that the SP intended to seek a conviction for misconduct in public office based on violations of both § 2601 (perjury) and § 605(f) (the Ethics Act).

After trial, the court below found that the Republic proved the elements of misconduct in public office beyond a

[10] Section 2301 also provides that a public official may commit misconduct in public office if he "wilfully neglect[s] to perform the duties of his office as provided by law." Uehara was not charged with violating this part of § 2301, and we therefore confine our discussion to the "illegal act" portion.

reasonable doubt. Specifically, it found that (1) Uehara was a Koror State legislator at the time he signed his financial disclosure statements; (2) he signed the statements under color of that office (or, as the trial court put it, "by virtue of his office"); and (3) he committed illegal acts by submitting three false forms. Concerning the specific illegal acts, the trial court found the evidence "overwhelmingly clear" that Uehara knowingly filed "false financial disclosure statements to the Ethics Commission on January 15, 2002, January 28, 2003, and November 14, 2005." Crim. Case No. 07-036, Decision at 6. (Tr. Div. Jan. 23, 2009). Although the trial court was mistaken that these findings supported Uehara's perjury convictions, it found every factual element necessary to conclude beyond a reasonable doubt that Uehara violated § 605(f) of the Ethics Act. Therefore, even though the Republic did not formally charge Uehara with violating the Ethics Act, the trial court expressly found that he violated it on three occasions and therefore committed three "illegal acts." Because the trial court found all elements of § 2301 beyond a reasonable doubt, we uphold Uehara's convictions for misconduct in public office. We now turn to the remainder of Uehara's issues on appeal.

III. Duplicity of the Information

Uehara next argues that the government's charging document was duplicitous. The court found Uehara guilty of three counts of perjury and three counts of misconduct in public office, but the information grouped each category of charge into single paragraphs entitled, respectively, "COUNTS 87-89 (Perjury)," and "COUNTS 90-92 (Misconduct in Public Office)." Uehara claims that each paragraph actually constituted only one count, meaning that each count charged him with multiple offenses. The court below rejected Uehara's pretrial objection to the information, and we review this conclusion of law *de novo*. *Lin*, 13 ROP at 57; *Rechucher*, 12 ROP at 53.

[11] In general, "[a] criminal information is sufficient if it contains all of the essential elements of the offense charged and fairly informs the accused of the charges against him which he must defend." *Franz v. Republic of Palau*, 8 ROP Intrm. 52, 55 (1999); *see also* ROP R. Crim. Pro. 7(c)(1); *United States v. Debrow*, 346 U.S. 374 (1953) (holding that sufficiency of an indictment is not a question of whether it could have been made more definite and certain). We review the sufficiency of an information in light of practical rather than technical considerations. *Gotina v. Republic of Palau*, 8 ROP Intrm. 56, 57-58 (1999); *see also* 1 Charles AlanWright, *Federal Practice & Procedure: Criminal* § 123 (3rd ed. 1999) ("The precision and detail [of an information] are no longer required, imperfections of form that are not prejudicial are disregarded, and common sense and reason prevail over technicalities.").

[12] An information is duplicitous where a single count charges the defendant with more than one criminal offense. *Republic of Palau v. Avenell*, 13 ROP 268, 269 n.2 (Tr. Div. 2006); *see also United States v. Hughes*, 310 F.3d 557, 560 (7th Cir. 2002). A duplicitous information is troublesome because it may be unclear whether a subsequent conviction rests on merely one of the offenses within a single count and, if so, which one. This implicates concerns of double jeopardy and affording the defendant proper notice of the charges against

him. *See Hughes*, 310 F.3d at 560; *see also* 1A Wright, *supra,* § 142 ("The vice of duplicity is that there is no way in which the jury can convict on one offense and acquit on another offense contained in the same count.").

[13] With these principles in mind, we find nothing improper about the information against Uehara. Even a quick read makes apparent that each paragraph charged three counts of perjury and three counts of misconduct in public office. Each paragraph is titled and numbered accordingly, and each begins by listing the three separate dates of Uehara's three separate disclosure statements. Those three documents were the basis for each count against him. An individually numbered list of paragraphs outlining each count might have been clearer (and repetitious), but our primary concern is whether the information apprised Uehara of the charges against him and whether one can determine on which counts the court convicted him.[11] The information satisfied these requirements.

Furthermore, Uehara makes no claim of prejudice. He is asking us to put form over function without a legitimate reason for doing so, and we decline the invitation. We find that the information is not duplicitous, that is, it does not charge multiple offenses in a single count, and it sufficiently apprised Uehara of the charges against him.

[11] Although not a component of the information itself, the summons served on Uehara also listed the charges against him as "Perjury (3 counts)" and "Misconduct in Public Office (3 counts)," further notifying Uehara that the government alleged three separate counts of each offense.

IV. The Republic's Change of Counsel

Uehara next claims that the trial court erred by permitting the AG to take over his prosecution after the SP resigned and left Palau. Uehara makes a variety of arguments to support this challenge: that the AG must have had a conflict because that is a necessary predicate to the SP's authority; that the two offices are not fungible; and that the lack of a formal substitution of counsel somehow undermines his conviction. We reject each of his arguments.

[14] We begin by noting that the AG and the SP have concurrent jurisdiction to prosecute public officials. *See* 2 PNC § 503; *Republic of Palau v. Sakuma*, 2 ROP Intrm. 23, 29 (1990). As it relates to this case, the legislature granted the SP two distinct powers: to investigate and prosecute any legal transgressions committed by a public official or government employee, 2 PNC § 503(a)(1); and to prosecute for the Republic in any case in which the Ministry of Justice has an actual or potential conflict of interest, *id.* § 503(a)(2).

Uehara argues that the SP may *only* prosecute a public official where the AG has a conflict of interest, meaning that permitting the AG to take over this case must have restored such a conflict. We have previously rejected this argument, albeit while addressing the issue from the other direction. In *Sakuma*, the defendants were public officials who argued that the AG could not prosecute them because the legislature granted the SP sole and exclusive authority to do so. 2 ROP Intrm. at 28. We disagreed, noting that the law creating the SP granted it the power to prosecute public officials but did not divest the AG of that same power. *Id.* at 29. We therefore held that

the SP and the AG possess concurrent authority to prosecute public officials, and the SP is the sole prosecutorial option only where the AG has a conflict of interest or some other ethical concern. *Id.* A necessary corollary to our decision in *Sakuma* is that the SP may prosecute a public official even where the AG has no conflict of interest or ethical concern.

This result accords with the plain language of 2 PNC § 503. Section 503(a)(1) states that the SP has the power to prosecute elected or appointed government officials. The statute does not limit this authority to situations in which the AG has a conflict. Nor does it divest the AG of the power to prosecute public officials, which it otherwise possesses, or state that the SP is the only office that may instigate such a prosecution. The Code of Ethics Act even expressly permits either office to enforce the statute, stating that "[p]rosecution under this section may be undertaken by the Attorney General or Special Prosecutor." 33 PNC § 611(a).

The next section, § 503(a)(2), then provides that the SP also may prosecute on behalf of the national government where the AG has a conflict of interest. Unlike § 503(a)(1), subsection (2) vests exclusive prosecutorial authority in such a situation to the SP, and it does not limit its scope to prosecuting public officials. The two provisions are distinct and cannot logically be read together. Either office may prosecute a public official, unless conflicted out. We find that the plain language of § 503 and our decision in *Sakuma* foreclose Uehara's argument.

Having concluded that either office had authority to prosecute Uehara, we turn to his arguments that the offices are not fungible and that the trial court should have required a formal substitution of counsel. Both the AG and the SP are arms of the executive branch and have the same client—the Republic. Although they possess different powers, the two offices had concurrent authority to prosecute Uehara. The SP resigned and left Palau, and the Republic was left with a choice: dismiss the case and risk forfeiting its prosecution, or substitute the AG. The Republic's interests required someone to take the case, and permitting the AG to do so was not error. Nor was the lack of a formal substitution. Although this case involves somewhat odd—and hopefully unique—circumstances, Uehara again attempts to place form over function. Uehara, his counsel, and the trial court were on notice of the change, and both parties knew that future filings should be served on the AG, not the SP.

Finally, and perhaps most importantly, Uehara has not explained how the change of counsel prejudiced or harmed him. The Republic had already rested its case-in-chief when Uehara became ill. Had the court dismissed the case, the Republic may have been precluded from re-prosecuting it. Uehara attempted to claim prejudice in his reply brief, but he is unable to point to a single circumstance that caused him harm. He merely noted that after the switch, the AG was required to interpret documents drafted by the SP. Without more, we find no error below.

V. Sufficiency of the Evidence

[15] To the extent that Uehara asserts that the Republic did not produce evidence sufficient to sustain his convictions for

misconduct in public office, the Court disagrees.[12] Convincing an appellate court that there was insufficient evidence for a conviction is a tall task; we review such a challenge for clear error and defer to the Trial Court's opportunity to assess the credibility of the witnesses. *See Labarda v. Republic of Palau*, 11 ROP 43, 46 (2004). We ask only whether there is evidence, viewed in the light most favorable to the prosecution, from which a rational trier of fact could have found defendant guilty beyond a reasonable doubt. *Id.* If so, we will not disturb the conviction even if we might have come to a different conclusion upon hearing the matter in the first instance. *Id.*

We find, as did the trial court, that there was ample evidence that Uehara knowingly failed to disclose reportable income on his financial disclosure statements. His primary argument on this point is that an Ethics Commission employee testified that his initial disclosure form, filed for the year 2000, was "all filled in good." He claims that the Ethics Commission implicitly approved his forms as substantively accurate by accepting them without comment. Uehara's contention is borderline disingenuous. The forms unambiguously required Uehara to disclose all income not earned from his government job, and there was evidence that he was collecting regular monthly income from KSPLA property at T-Dock. The Commission had no way of knowing whether he had additional, undisclosed sources of income. The Commission was thus unable to opine on whether Uehara's forms were substantively adequate; it only reviewed the form, confirmed that he filled in each section, and concluded that it was facially complete. Uehara cannot have reasonably believed that the Commission's silence authorized his failure to report additional rental income.

The record is replete with additional evidence suggesting that Uehara knowingly and willfully furnished false information on his disclosure statements. The initial form required disclosure of any income source of over $500, and it listed "Rents and Royalties" as an example. In each subsequent form, Uehara certified that he had no additional sources of income, despite receiving over $20,000 in rent. Again, we must only determine whether there was evidence from which a reasonable fact finder could have found Uehara guilty of violating § 2301 beyond a reasonable doubt, and we conclude that there was.

VI. Merger

The last of Uehara's arguments is that his conviction for perjury merges with his conviction for misconduct in public office, such that convicting and punishing him for both crimes violates his right against double jeopardy. *See* Palau Const. art. IV, § 6; *Scott v. Republic of Palau*, 10 ROP 92, 96 (2003) (noting that protection against double jeopardy insulates defendant from being tried, convicted, or punished more than once for the same offense). Because we have already determined that Uehara's perjury convictions were in error, we need not address this argument. Uehara will only be punished for one crime—misconduct in public

[12] Because we have already ruled on the perjury convictions, the Court limits this section to Uehara's claims that the Republic did not adequately prove that his financial disclosure statements were actually false.

office—thereby relieving any potential double jeopardy concerns.

CONCLUSION

Palau's perjury statute requires a defendant to take an oath or legal substitute therefor "before" a competent person. In this case, the Republic produced no evidence—and the trial court made no factual finding—concerning this essential element of perjury under 17 PNC § 2601. We therefore REVERSE the trial court's decision finding Uehara guilty of three counts of perjury. The SP's information, however, charged Uehara with misconduct in public office based on both his alleged perjury *and* his violations of the Code of Ethics Act, and the trial court expressly found all of the elements of the latter. We therefore AFFIRM the trial court's decision finding Uehara guilty of three counts of misconduct in public office, in violation of 17 PNC § 2301. Given the altered outcome of this case, we REMAND to the trial court for re-sentencing in light of this opinion.