

DISSENTING OPINION OF ACOBA, J.,

I respectfully disagree with the statement that “the district court was not required to recuse itself[.]” Summary Disposition Order at 2. It is undisputed that Defendant-Appellant Paul J. Cunney (Defendant) was previously involved in a series of conflicts with the presiding judge, including complaints to the Office of Disciplinary Counsel, referral for criminal contempt charges, and several heated arguments apparently in conjunction with driving under the influence cases.

Saying he was “holding” Defendant to a “higher standard,” the judge singled out Defendant by taking judicial notice of Defendant’s law license and imputing to Defendant constructive knowledge of the sanctions for failing, or refusing to take, an alcohol concentration test. However, Defendant was entitled to be given the same information required by State v. Wilson, 92 Hawai’i 45, 987 P.2d 268 (1999), as any other driver, irrespective of his occupation. The burden is on the government to provide such information and a defendant’s knowledge is irrelevant. C.f. Castro v. Administrative Dir. of the Courts, 97 Hawai’i 463, 469, 40 P.3d 865, 871 (2002) (“the obligation to accurately inform a driver of the sanctions rests on the police; no obligation is imposed on the driver to make any inquiry”). Under the circumstances, the questionable application of the law to this particular Defendant would raise an appearance of impropriety.

For that reason, I respectfully dissent.