

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

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OFFICE OF THE GOVERNOR OF GUAM

TRANSMITTED VIA CENTRAL FILES

March 13, 2024

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**Re: REQUEST FOR CLARIFICATION OF ATTORNEY GENERAL'S
2/28/2024 WITHDRAWAL FROM AGENCY REPRESENTATION**

Håfa Adai Attorney General Moylan:

On February 28, 2024, I received a letter from you with the subject "Notice of Possible Conflict of Interest; *Temporary* Withdrawal Legal Representation to Protect Public Interest." In your letter, you disclosed that the courts are presently considering motions to disqualify your office in two criminal cases you have brought against public officials, on the basis that you previously provided legal advice to their agencies. You state that "raising the conflict of interest issue necessitates judicial scrutiny." You further explain that the judicial scrutiny into the functions of your office has "created a *distracting and untenable operating situation.*"

Expressing the concern that the "danger of violating an ethical rule" is too great, you state in bold letters that you "***have therefore elected to temporarily withdraw from representing your dept. due to this potential legal conflict and until the Courts give us a clear direction.***" Further in your letter, you repeat that "[b]ecause of this legal scrutiny in the Courts upon the ethical conduct of the AG's Office attorneys, we have reluctantly decided to *temporarily withdraw from representing Departments and Agencies in which we have active criminal and / or civil investigations.*"

Still further on, you state that you "are therefore providing notice that *effective immediately*, and until such time as the before-mentioned criminal cases authorize our Office to provide legal representation in both prosecuting government officials accused of corruption and also providing legal advice to that same department or instrumentality that the government official

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works for, we will be temporarily withdrawing from providing certain government depts. and Instrumentalities any legal services to avoid any ethical violations until the Courts resolve the issue.”

Finally, you discuss the processing of documents moving forward, stating that “For any document that requires the AG’s Office signature, we will simply insert on the signature line ‘potential conflict, cannot sign.’ We do not provide to you a legal opinion on whether Guam law allows for processing the document without the AG’s Office signature, and recommend that you seek the assistance of an independent counsel.”

You conclude by stating that until further notice, “any communications with our Office is to be considered by you as non-privileged and not protected by the Attorney-Client Privilege.”

Attached to your letter was a list of reports issued by the Office of Public Accountability and a list of twenty-one (21) agencies and instrumentalities under investigation by your office, though it appears a twenty-second (22nd) agency was added at a later time. You testified before the Legislature that a version of this letter was sent to the agencies on the list, advising them of your withdrawal from representing their respective agencies.

On February 29, 2024, I received a second letter from you with the subject “Processing of Documents for Approval by Attorney General.” In this letter, you state that you “are prepared to process documents transmitted to this Office on behalf of the ‘Government of Guam’ with the understanding that we serve as a ‘check’ upon your department to protect the Government of Guam/People of Guam’s legal interests, not yours or your department’s.” You state further that if I wish to process any documents through your office during your withdrawal, I “will be required to acknowledge, consent to and agree to” a number of terms, including (1) that you will not serve as the attorney for the Office of the Governor in processing documents for the AG’s signature, (2) that by reviewing the documents, you do so to protect the public interest and the “Government of Guam/People of Guam’s legal interests,” not mine or the interest of the Office of the Governor, (3) that I acknowledge the Office of the Governor may be under investigation and that you are not its attorney in the document review and approval, (4) that you reserve the right to investigate and prosecute government officials in their personal or official capacities regardless of your approval of the documents, and (5) that if I believe I have any civil or criminal exposure that I am encouraged to seek the advice of independent legal counsel because you are not the attorney for the Office of the Governor. You further state that in the event I do not choose to sign the form, you recommend that I seek the assistance of independent counsel to process my document because you will write “potential conflict, cannot sign” on the signature line. It is my understanding that a version of this letter was also sent to the same agencies identified in your prior letter.

On Friday, March 1, 2024, I invited you to meet to discuss the issues you raised in your letters, and to confirm whether you, in fact, intended to withhold all legal services from the identified agencies during the pendency of your investigations. You confirmed that you did. I told you that if you proceeded with your withdrawal, our entire government would “grind to a halt.” You agreed. You stated you wanted the Legislature to pass a law that authorized you to proceed

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with your practice of prosecuting agency officials who your office previously provided advice to, at which time my legal counsel pointed out that the Supreme Court of Guam has exclusive jurisdiction over attorney ethics and discipline. After some thought, you agreed. I was surprised to learn at a later date that you went forward with submitting your ethics bill to the Guam Legislature and was not at all surprised when the Supreme Court of Guam immediately sent a letter advising the Legislature that the subject of ethics was exclusively regulated by the judicial branch.

We also discussed the issue of the consent forms you expected agencies to sign before you agreed to review their contracts, which you discussed in your February 29th letter. I expressed serious concern over this consent form based on the fact that you *are* the attorney for these agencies, and that this waiver was particularly harmful to line agencies who do not have in-house or contract counsel to assist and advise them. You reiterated that you would not sign contracts unless agencies agreed to sign these forms.

On March 6-7, 2024, you testified at length before the Guam Legislature in an emergency session called regarding Bill No. 206-37 (LS). On March 6, 2024, you testified in response to Senator San Agustin to get procurements going and you responded, "We're gonna get ... procurements moving. There [were] 22 departments and agencies that were identified, so only 22 of them received that type of the two letters. And ... basically, we're still going to be approving it, but there's going to be a disclosure on it."

On March 7, 2024, you provided the following testimony in response to Senator Duenas' line of questioning stating, "I sat down with the governor [and] explained to the governor and [her] counsel the situation. ... So there is no problem. We are processing any documents that need to be processed, returning documents that do not fulfill the legal requirements to have it corrected. And then processing it like we did last month, two months ago, and like we've always done." Additionally, you stated, "Not processing contracts and procurements that are in the best interest of our people of Guam is not an option for the Attorney General's office." Lastly, in response to Senator Perez's line of questioning, you stated, "We have, I think, upwards of 100 contracts that are on 30-day type of reviews by the AG's office and will continue to be under review. If a contract has an illegality or some problem with it, it's our job as the public watchdog the checks and balances in the system to send it back to the government official."

On March 8, 2024, I received the Service Provider Agreement between the Division of Senior Citizens at the Department of Public Health and Social Services ("DPHSS") and Gurusamy Inc. dba Health Services of the Pacific for management and operations services for the Adult Day Care Services Program ("Adult Day Care contract"). On the signature page of the contract, it appears as though Chief Deputy Attorney General Joseph Guthrie signed above your signature line (though, notably, he does not sign *for* you), under the notation "Approved as to Legality and Form." He appears to have executed the contract on February 28, 2024. In the margin below his signature line appears a stamp that states "Approved: Not Representing ANY Public Official." As you know, DPHSS, as a line agency, does not employ or have contracts

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with attorneys. DPHSS is, in fact, counting on *you* to serve as their attorney in all legal matters, including advising the agency regarding the legality of their procurements and their contracts.

I am also aware that on March 8, 2024, Guam Homeland Security/Office of Civil Defense ("GHS/OCD") also submitted a contract for your review, which your office initially refused to accept, referencing your office's withdrawal from representation of GHS/OCD. A few hours later, your office policy appeared to change, and GHS/OCD was asked to return their documents to your office for your review.

Given the letters you have sent to me and the affected agencies, the numerous statements you have made regarding the status of your relationship with Executive Branch agencies before the Legislature and in the media, and your actions that are inconsistent with the letters you sent your agency clients, I request that you clarify the following: (1) whether you intend to rescind your February 28th letter in which you withdraw from representation of the affected Executive Branch agencies; (2) whether you are in fact agreeing to provide legal services to Executive Branch agencies, including responding to legal inquiries, representing agencies in actions before the courts and the CSC, and reviewing and approving documents, including procurement documents, plans, and proposed regulations; (3) whether you *are* serving as legal counsel to agencies when you review their contracts, including DPHSS in its Adult Day Care contract; (4) given the apparent shift in your policy regarding contract review, whether you are rescinding your February 29th letter, and providing your agency clients with a new statement in writing outlining your apparent new policy; and (5) whether you will treat communications between attorneys in your office and the affected Executive Branch agencies as confidential or privileged attorney-client communications, including with regard to any legal advice the agencies solicit or which your office provides as to procurements and contracts.

Given the urgency of these matters, including the Adult Day Care contract, I expect that you will address these concerns promptly.

Senseramente,



LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

cc via email: The *Honorable* Joshua F. Tenorio, Lt. Governor of Guam