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22-620
CIVIL SERVICE COMMISSION
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**BEFORE THE CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM**

IN THE MATTER OF:

LEORUSTUM S. ESPIA,

Employee,

vs.

**GUAM HOMELAND SECURITY/OFFICE
OF CIVIL DEFENSE/OFFICE OF THE
GOVERNOR,**

Management.

**) ADVERSE ACTION APPEAL
) CASE NO. 22-AA06T**

**)
)
) OBJECTION TO GFT FILING ON SEPTEMBER 28,
) 2022; RENEWED MOTION TO STRIKE ALL
) DOCUMENTS AND PARTICIPATION BY CHARLES
) ESTEVES IN 22-AA06T; MOTION TO STRIKE
) STIPULATION SIGNED BY EMPLOYEE AND
) ESTEVES DATED SEPTEMBER 7, 2022 AND FILED
) SEPTEMBER 12, 2022; MOTION TO DISQUALIFY
) ROBERT KOSS FROM REPRESENTING ESPIA IN
) CSC APPEAL 22-AA06T**

COMES NOW, the Guam Homeland Security/Office of the Civil Defense/Office of the Governor ("Management"), through the Office of the Attorney General, and submits this objection to GFT's improper filing on September 28, 2022, a renewed motion to strike all documents from Charles Esteves in 22-AA06T (now to include the stipulation signed by Employee and Charles Esteves which was filed on September 12, 2022 without knowledge or notice to Management's counsel), and a motion to disqualify Robert Koss from representing

Leo Espia due to his unethical and improper conduct, including but not limited to, his exparte and unauthorized communications with Charles Esteves, with CSC staff, and his failure to serve Management's counsel with the stipulation that the Guam Federation of Teachers ("GFT") filed with CSC on September 12, 2022.¹

Procedural History

Employee Leo Espia was investigated and later dismissed by Acting OCD Administrator/HSA Samantha Brennan with the approval of the Governor and Chief of Staff Jon Calvo, Jr., at a time when Charles Esteves was off-island on extended military orders for approximately two (2) years. Chief of Staff Jon Jr. Calvo signed the GG-1 on behalf of himself and the Governor relating to Espia's dismissal from employment. The Department of Administration issued a Notice of Personnel Action for Espia's dismissal. Mr. Espia thereafter filed an appeal of his termination.

AAG Lawrence filed a notice of entry of appearance on behalf of Management on May 9, 2022. Another entry of appearance was filed by AAG Lawrence and signed by Chief of Staff Jon Calvo Jr., on or about May 19, 2022 and served on GFT on May 23, 2022.

AAG Lawrence and Robert Koss appeared at the status call on Espia on May 11, 2022. Robert Koss was aware of AAG Lawrence's representation in this case as of the status call on May 11, 2022, before CSC. GFT was served with both notices of entry on May 16, 2022 and May 23, 2022. GFT lay representative Robert Koss filed and served a Notice of Entry of Appearance on Espia's behalf on May 13, 2022 after the status call on May 11, 2022, and only after Management's counsel inquired as to any notice of entry filed by Robert Koss.

Neither Employee nor GFT filed motions by the motion deadline.

Management timely filed motions by the motion deadline of ***September 14, 2022***. These motions include, among others, a motion to recuse Chairman Calvo, a motion to strike and expunge all Charles Esteves documents in Espia's file (22-AA06T), a request for the Commissioners and Executive Director to disallow and prohibit any participation from

¹ Robert Koss filed an objection on September 28, 2022. Employee did not sign or approve this filing. Only Robert Koss signed the objection. Attached to this objection is a copy of the stipulation GFT filed on September 12, 2022, and which was not served on Management's counsel until attached as part of the objection on September 28, 2022. This objection by lay representative Koss improperly attempts to engage in legal analysis; however, Mr. Koss is not an attorney licensed to practice law on Guam. Management objects to Robert Koss' continued illegal and unauthorized practice of law.

Charles Esteves in Espia's appeal, and a request for a new case manager for Espia's appeal, and orders from the Commissioners also prohibiting Eric Miller, Roland Fejarang and Cynthia Camacho from any further participation in this appeal for the reasons stated in the motion filing. The motion also requests the Commissioners (and Executive Director) conduct an administrative investigation into CSC staff relating to their conduct in this appeal, including any unauthorized and/or ex parte communications with Management officials and others despite written notice of Management's representation by AAG Lawrence.

Objection and Motion to Strike Stipulation Dated September 7, 2022 (Filed September 12, 2022); Renewed Motion to Strike All Documents from Esteves in 22-AA06T

On **September 28, 2022**, GFT filed an objection and attached a stipulation between Mr. Espia and Charles Esteves attempting to settle Espia's CSC appeal in 22-AA06T. This settlement agreement has Robert Koss' name at the top of page one. The agreement was not provided by GFT to Management's counsel at any time nor did GFT advise Management's counsel he was attempting to resolve the matter directly with Charles Esteves. GFT filed the stipulation with CSC on September 12, 2022, according to CSC's docket sheet, but GFT did not serve the agreement on Management's counsel, which is a violation of CSC AA Rule 6.

The agreement is void as neither the Governor nor the Chief of Staff signed the stipulation to approve any such settlement. Mr. Esteves is not authorized to employ any persons without the approval of the Governor or on her behalf. See 10 GCA § 65103(b). See Exhibit 1.

Both GFT and Employee have attempted to improperly mislead the Commission with the filing of the stipulation signed by Mr. Espia and Charles Esteves with GFT's logo and heading. This stipulation is void and lacks any legal effect and must be stricken and expunged forthwith. Unlike the GG-1 confirming Espia's dismissal ***with the approval of the Governor and Chief of Staff Jon Calvo Jr***, the stipulation improperly attempts to employ Espia ***without the approval*** of the Governor or the Chief of Staff on her behalf.

Renewed Motion to Prohibit Further Participation by Charles Esteves in 22-AA06T

Management's motions timely filed on September 14, 2022 seek an order from the Commissioners to ***disallow and prohibit any participation in this appeal by Esteves*** as he was not the OCD Administrator at the time of the adverse action and was off-island on military orders during the periods referenced in the adverse action. At the time of Management's motion filing, it was not aware of the stipulation signed by Esteves and Employee on or about September 7, 2022, and was unaware of any filing with CSC on September 12, 2022, as GFT and Employee improperly failed to apprise Management's counsel of any such settlement or filing. This failure to serve a copy on Management's counsel violated CSC AA Rule 6 attached to this filing.

Esteves is on extended military leave for approximately a year to be extended thereafter. He is not working with the OCD at this time nor he was working in his official capacity in May and early June 2022 when status calls were held in this case. Esteves also appeared on the radio while he was off-island and admittedly working at Ft. Leavenworth. As indicated in Management's prior filing, Esteves lacked standing to appear before CSC at status calls held in May 2022 and he lacked standing to file documents in Espia's appeal because he was not working at OCD but was off-island on military leave. These documents are the subject of a motion to strike and now a renewed motion to strike since Management just became aware of the filing of a stipulation on September 12, 2022, which is void.

Now that Management and Management's counsel just became aware of the stipulation allegedly signed by Employee and Charles Esteves on or about September 7, 2022, and filed with CSC on September 12, 2022, it renews its motion to strike all documents from Esteves and his participation in this appeal.

Motion to Disqualify Robert Koss

Management contends Robert Koss acted unethically and improperly by communicating with Charles Esteves regarding Espia's appeal, by his drafting or providing a stipulation to be circulated by Mr. Espia to Mr. Esteves, while knowing Management is represented by legal counsel in Espia's appeal (22-AA06T).

Management's counsel did not give Mr. Koss authorization to speak with or communicate with Charles Esteves in Espia's appeal.

Robert Koss did not communicate any offer on Espia's behalf to Management's counsel at any time in this case. Instead, he appears he disregarded the notice of Management's representation by counsel and appears to have communicated with Esteves (or had his client communicate directly with a management representative without the knowledge and consent of Management's counsel). It is believed Robert Koss had improper ex parte communications with CSC staff.

GFT filed the stipulation with CSC on September 12, 2022, and did not provide a filed copy of this stipulation to Management's counsel until September 28, 2022 (which it was attached as part of GFT's objection). This was a violation of CSC AA Rule 6. See Exhibit 2. All filing with CSC must be provided to a party or that person's representative, if represented. Robert Koss was aware Management was represented by AAG Lawrence in 22-AA06T, and failed to serve the stipulation filed on September 12, 2022, until after the motion filing deadline of September 14, 2022, set in this case. Fortunately, Management, although unaware of this void stipulation or its filing had moved to strike all documents from Esteves and his further participation in this appeal, and objected to any illegal and unauthorized practice of law by GFT.

Mr. Koss is now a material witness in this appeal relating to his communications and improper conduct with Esteves and CSC staff, and his filings with CSC. Mr. Koss failed to have Management's counsel served with the stipulation filed on September 12, 2022. Robert Koss did not advise Management's counsel at any time prior to September 28, 2022, that he drafted and/or he had provided a settlement agreement with his name at the top to Charles Esteves (or received a signed agreement from Mr. Esteves) regarding his client Leo Espia. The proposed settlement dated September 7, 2022 has Mr. Koss' name at the top.

As indicated above, this agreement is of no legal force and effect, because it was not approved by the Governor or Chief of Staff on behalf of the Governor. This stipulation must be stricken and expunged and is void. Esteves has no authority under Guam law to employ any persons *without the approval of the Governor*.

Improperly attached to the stipulation is yet another copy of the documents Charles Esteves filed in 22-AA06T while he was off-island on military orders. Management's motions filed on September 14, 2022, have requested to strike these improper filings by Esteves for lack of standing.

CSC's AA Rule 13.2 allows the Commission to issue reasonable discipline against Mr. Koss to include disqualifying him from representing employee so long as it does not prejudice employee. See Exhibit 2 (CSC AA Rules 6 and 13.2 (March 2010)). Mr. Koss must be disqualified because of his unethical and improper conduct, his communication with Management officials knowing Management is represented by counsel, and his circulating and having Management served with a stipulation well after the date motions were due in this case. Had Management been apprised of the stipulation signed on September 7, 2022 and filed September 12, 2022, Management's motions on September 14, 2022, would have included an objection and motion to strike the stipulation and to request Robert Koss' disqualification as of its September 14, 2022 filing. GFT has improperly attempted to mislead this commission, engage in improper and unauthorized communications and continues to engage in the illegal and unauthorized practice of law.

There is no prejudice to employee to disqualify Robert Koss and Employee himself appears to have participated in this improper, unethical and misleading conduct. Employee can be given time to find another lay representative or attorney should he wish to do so.

GFT has been previously been warned in a written order from this Commission about contacting Management officials knowing they were represented. GFT/Mr. Koss have previously been terminated from representing an employee in a CSC appeal after ex parte communications between Robert Koss and Roland Fejarang were discovered and revealed to the Commissioners. Mr. Koss also previously filed a pleading with this Commission defaming AAG Lawrence, and this Commission granted the motion to strike that pleading and warned Mr. Koss about his improper conduct.

Management requests that Mr. Koss be disqualified from representation because he continues to engage in ex parte and improper and unethical conduct.

CSC File Review and Document Request September 29, 2022

CSC staff also failed to notify Management's counsel of any stipulation filed in 22-AA06T at any time. After reviewing the stipulation served by GFT on September 28, 2022, as part of Employee's filed objection to Management's motions filed on September 14, 2022, Management's counsel viewed CSC's file on September 29, 2022 and confirmed that CSC staff placed the stipulation in Espia's file (22-AA06T). There was even a note from Cynthia Camacho to Susan Corbin requesting a signing be set based on the stipulation. A review of the docket sheet at CSC did confirm that GFT/Robert Koss filed the stipulation on September 12, 2022 (Doc 22-565). Management's counsel has asked the Executive Director and CSC staff for documents to be produced from its file review on September 29, 2022. These documents, including the complete four (4) page docket sheet are due by email to Management's counsel (and to GFT) on or by October 5, 2022. See Exhibit 3.

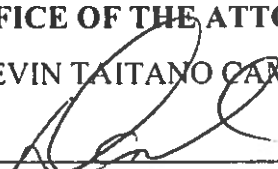
Dated:

10/4/22

OFFICE OF THE ATTORNEY GENERAL

LEEVIN TAITANO CAMACHO, Attorney General

By:



DONNA LAWRENCE

Assistant Attorney General

Encs: Exhibits 1-3

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10 GCA HEALTH AND SAFETY
CH. 65 CIVIL DEFENSE

(1) to create within the Office of *I Maga'lahaen Guahan* an Office of Civil Defense for Guam;

(2) to confer upon *I Maga'lahaen Guahan* and at his discretion to delegate to other officials of Guam the emergency powers provided herein;

(3) to provide for the rendering of mutual aid with other territories and the states, and to cooperate with the Federal government with respect to the carrying out of civil defense functions; and

(4) to authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out the provisions of this Chapter.

It is further declared to be the purpose of this Chapter and the policy of Guam that all civil defense functions of Guam be coordinated to the maximum extent with the comparable functions of the Federal government, including its various departments and agencies and of private agencies of every type, to the end that the most effective preparation and use may be made of the manpower, resources and facilities of Guam and of the Nation for dealing with any disaster that may occur.

SOURCE: GC § 8500. Amended by P.L. 24-298/7. Subsection (1) amended by P.L. 28-046/12 (June 10, 2005).

§ 65102. Definition and Scope of Activity.

As used in this Chapter the term Civil Defense shall mean the preparation for the carrying out of all emergency functions, other than functions for which United States military forces or other Federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disaster caused by enemy attack, sabotage or other hostile action or by fire, flood, typhoon or other causes. These functions include, without limitation, fire fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, plant protection, temporary restoration of public utility services and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for the carrying out of the foregoing functions.

SOURCE: GC § 8502.

§ 65103. Office of Civil Defense: Creation; Administrator; Personnel.

10 GCA HEALTH AND SAFETY
CH. 65 CIVIL DEFENSE

(a) There is hereby created, within the Office of *I Maga'lahaen Guåhan*, an Office of Civil Defense with an Administrator of Civil Defense, hereinafter called the 'Administrator,' who shall be a member of the classified service and is the administrative head of the Office of Civil Defense, subject to the direction and control of *I Maga'lahaen Guåhan*.

* (b) The Administrator, with the approval of *I Maga'lahaen Guåhan*, may employ such technical, clerical, stenographic and other personnel and may make such expenditures within the appropriation therefore, or from other funds made available to him for purposes of civil defense, as may be necessary to carry out the purposes of this Chapter.

(c) The Administrator and other personnel of the Office of Civil Defense shall be provided by *I Maga'lahaen Guåhan* with appropriate office space, furniture, equipment, motor vehicles, supplies, stationery and printing in the same manner as are provided for personnel of other government of Guam agencies.

(d) The Administrator, subject to the direction and control of *I Maga'lahaen Guåhan*, shall be the administrative head of the Office of Civil Defense and shall be responsible to *I Maga'lahaen Guåhan* for carrying out the program for the civil defense of Guam. He shall coordinate the activities of all organizations for civil defense within Guam, and shall maintain liaison with and cooperate with civil defense agencies and organizations and the Armed Forces of the Federal government, and shall have such additional authority, duties and responsibilities as are authorized by this Chapter, or as may be prescribed by *I Maga'lahaen Guåhan*.

SOURCE: GC § 8503, Amended by P.L. 24-298/8; P.L. 28-046/13 (June 10, 2007).

NOTE: Public Law 28-68/IV:42 (Sept. 30, 2005) purported to transfer the duties herein assigned to the Civil Service Commission to the Director of Administration. However, P.L. 28-046/13 (June 10, 2005) already removed reference to the Civil Service Commission from subsection (a).

§ 65104. Civil Defense Advisory Council.

There is hereby created a Civil Defense Advisory Council, hereinafter called the 'Council', consisting of fourteen (14) members, in addition to the chairman, appointed by *I Maga'lahaen Guåhan* as follows: one (1) member from the Guam Police Department; one (1) member from the Guam National Guard; one (1) member from the Department of Public Health and Social Services; one (1) member shall be the President of the Mayors' Council of Guam or his representative; one (1) member from the

- a. have a reasonable time which may not exceed twenty (20) work days to prepare his case, if on duty;
- b. have the right to be represented by an attorney, another person who is not an attorney, or represent himself; and
- c. not suffer from Management any restraint, coercion, discrimination or reprisal for filing an appeal of an adverse action, either during the appeal process or after it has been adjudicated;
- d. read, understand, and indicate such by signing the "Disclosure and Release of Information" form provided by the CSC upon filing of his appeal.

RULE 6 SERVICE OF DOCUMENTS

All documents filed with the CSC, except for the Final Notice of Adverse Action and the Notice of Appeal, shall be served by the parties on each other or to the other's representative or lawyer. The exception to this is when the CSC Board Chairman requests the prevailing party to provide a draft Decision and Judgment. Service means giving a copy of a document to a party, a party's representative or lawyer on record with the Commission.

RULE 6.1 HOW SERVICE IS PERFORMED

Service may be made by the parties and Commission as follows:

- a. Personal delivery, with a copy of the document acknowledged in writing to have been received; or
- b. By facsimile to a representative's or attorney's place of business with a confirmed receipt; or
- c. Regular mail with supporting affidavit as to the date of mailing; or certified mail with a signed return receipt; or
- d. By any method of service established by the Superior Court of Guam's Rules of Civil Procedure.

If the Estate of the Employee does so apply, then the appeal shall be adjudicated.

In the event the Employee prevails, the Estate of the Employee shall receive the compensation, but not the benefits, the Employee would have recovered up to the date of his death.

RULE 13 REPRESENTATION OF EMPLOYEES BY PERSONS WHO ARE NOT ATTORNEYS

The laws of Guam permit persons who are not attorneys to represent Employees and Management before the CSC as follows:

- a. 7 GCA § 9215(c)(16) permits a person who is not an attorney to represent an employee before the CSC in actions related to government service.
- b. 7 GCA § 9215(c)(12) permits a government employee to represent a government agency in "administrative hearings" as part of such person's official duties.

RULE 13.1 RULES RELATIVE TO REPRESENTATIVES

A non-lawyer or attorney not licensed to practice on Guam who represents an Employee before the CSC or who represents a government agency before the CSC, shall be called a "Lay Representative."

All Representatives shall enter his appearance in an action by filing with the CSC an entry of appearance which shall include the written approval of his client and shall also contain the address and telephone number of the Representative.

RULE 13.2 ENTRY OF APPEARANCE

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By entering his appearance before the CSC, the Representative becomes subject to the Orders of the CSC and to reasonable discipline and to contempt proceedings by the CSC.

Reasonable discipline may include, but is not limited to, the following:

- a. Disqualification from appearing before the CSC, so long as the disqualification does not prejudice the client's interest.

By agreeing to be a Representative, the Representative assumes an ethical and agency relationship with the Employee that he represents. Lay Representatives may not be compensated for their services but may seek reimbursement for reasonable, actual costs incurred and substantiated with receipts in preparing for and appearing at hearings and status calls and conferences before the CSC related to the action such as, but not limited to, photocopying costs.

RULE 13.3 WITHDRAWAL AS LAY REPRESENTATIVE

No Lay Representative or attorney/law firm may withdraw from representing an Employee except upon motion, cause shown, and an Order of the CSC.

RULE 13.4 LAY REPRESENTATIVE REQUIRED READING

Every Lay Representative and attorney shall agree in writing that he has read, and is familiar with, 4 G.C.A., Chapter 4, these Rules, and the Personnel Rules applicable to the government agency that took adverse action against the Employee.

RULE 14 HEARING COUNSEL

The CSC, by a majority vote, may designate its Administrative Counsel to act as

MS



Donna Lawrence <dlawrence@oagguam.org>

Espia docs - please email to AAG Lawrence and GFT

1 message

Donna Lawrence <dlawrence@oagguam.org>

Thu, Sep 29, 2022 at 12:51 PM

To: Audre King <audre.king@csc.guam.gov>, Cynthia Camacho <cynthia.camacho@csc.guam.gov>, Daniel Leon Guerrero <daniel.leonguerrero@csc.guam.gov>, Eric Miller <eric.miller@csc.guam.gov>, Janeque Sagun <janeque.sagun@csc.guam.gov>, Maria Masnayon <maria.masnayon@guam.gov>, Roland Fejarang <roland.fejarang@guam.gov>, Susan Corbin <susan.corbin@csc.guam.gov>, Vickilynn Sablan <vickilynn.sablan@csc.guam.gov>

Cc: Donna Lawrence <dlawrence@oagguam.org>, Karl Espaldon <kespaldon@oagguam.org>, "Marie L. Cruz" <mlcruz@oagguam.org>, Robert Koss <rkoss@gftunion.com>

Executive Director,

In addition to the documents requested yesterday via email on Espia, which have not yet been received, please also provide the following documents to me and Mr. Koss regarding Leo Espia:

- 1) CSC's complete docket sheet as of today's file review date of Sep 29, 2022;
- 2) All documents signed by Charles Esteves in Espia's CSC file as of the Espia file review date of Sep 29, 2022;
- 3) any and all stipulations signed by Robert Koss and Charles Esteves in CSC's file as of Sep 29, 2022, including all documents showing CSC's document number and notes and communications, including all electronic communications, by and between any and all CSC staff as to the stipulation, including the note between Cynthia Camacho and Susan Corbin to set a signing for the stipulation) and any communications denying the request to set a signing;
- 4) all documents showing filing and receipt by the commission of any and all filings in Espia's CSC APPEAL, signed or submitted by Charles Esteves, Espia, and/or on their behalf by GFT, including but not limited to, all document and intake logs, sign in sheets and all electronic communications between May 1, 2022 through September 29, 2022 for document numbers 22-565 (stipulation filed sep 12, 2022), 22-598 (gft filing on sep 28, 2022), and 22-312 (May 11, 2022 email and docs from Esteves.
- 5) all documents concerning Charles Esteves that are in Espia's file as of the file review date today, Sep 29, 2022. If any documents were removed, please advise of the date such documents were removed and provide all supporting documents as to the removal of any documents from Espia's CSC file.

Senseramente,

--

Donna E. Lawrence

Assistant Attorney General

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9/30/22, 3:04 PM



Office of the Attorney General Guam Mail - Espia docs - plea



Mail to AAG Lawrence and GFT

Email: dlawrence@oagguamag.org

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