

MARY C. TORRES

277 Chalan Santo Papa
Hagatna, Guam 96910
671-777-0000

January 25, 2019

Transmitted via Hand Delivery

Ms. Connie Jo Shinohara
Deputy Manager of Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

Re: Submission of Documents Relative to Actions of the Law Firm of Phillips & Bordallo, P.C., as Attorneys of the Port Authority of Guam, in Violation of the Guam Rules of Professional Conduct

Dear Ms. Shinohara:

I write to you in the hopes of providing information which may aid your review of the December 2012 termination of employees at the Port Authority of Guam.

As you are aware, I formerly served as the General Manager of the Port from February of 2012 until December of 2012. During my tenure as the GM, the law firm of Phillips & Bordallo, P.C. (“Phillips Firm”) served as the Port’s counsel.

I’ve publicly stated my belief that the Phillips Firm committed multiple ethical violations in the past. My purpose in providing this evidence for your review remains the same: **to reiterate the ruin of innocent lives when officers of our legal system violate the very rules they were sworn to uphold and defend.**

While some have painted the re-examination of the “Port 7” case as nothing more than a political exercise, I can’t help but note the irony. The employees, most of whom were long-time members of the Port’s family, were nothing more than victims of an orchestrated political hit—so evident in its design that the very person who is responsible for processing worker compensation claims and initiating payment was notably excluded from any of the Firm’s accusations of conspiracy or wrongdoing.¹

One would assume that the attorneys of the Phillips Firm demonstrate respect for the legal system and use the law’s procedures only for legitimate purposes. The details and evidence contained herein indicate otherwise. I maintain that, had the Philips Firm regarded their responsibilities and rules of professional conduct when investigating the 2012 worker’s compensation claim, **we would not be embroiled in the unresolved liability and credibility issues which threaten the Port to this day.**

To demonstrate this belief, this correspondence contains a brief **Factual Background** of the Phillips Firm’s actions, as well as a short analysis of the **Conduct by the Attorneys John R.B. Bell**

¹ Notwithstanding the fact that Attorney John R.B. Bell of the Phillips Firm sent an email, on approximately October 31, 2012, stating that Bell thought the individual responsible for processing worker compensation claims, Mr. Roberto, did not understand the requirements of the worker's comp administration and that Mr. Roberto was basing decisions regarding the 2012 claim on erroneous factual and legal conclusions.

and Michael F. Phillips in violation of the Ethics Rules. At all times relevant herein, the Phillips Firm served as counsel to the Port pursuant to a Professional Services Agreement between the Port and the Phillips Firm dated November 28, 2011. I have also included as exhibits the following documents:

1. **Exhibit "A"**— the Professional Services Agreement between the Phillips Firm and the Port. This document establishes that at all relevant times, the Phillips Firm was the attorney for the Port Authority of Guam, and not any individual member of the Port's Board of Directors ("Board").
2. **Exhibit "B"** — an undated report prepared and issued by the Phillips Firm, together with Exhibits 1-60, titled "Reported Slip and Fall." Although this report is undated it was provided to me on November 30, 2012 and the accompanying exhibits were delivered on December 2, 2012.
3. **Exhibit "C"** - a second report prepared and issued by the Phillips Firm, titled "Findings of Fact and Conclusions of Law," dated December 4, 2012. (Exhibits "B" and "C" are hereinafter referred to as the "Phillips Report," unless otherwise stated). The Exhibit C Report contains the Phillips Firm's so-called investigative findings relating to the worker's compensation matter, and many harmful misrepresentations and falsifications regarding my conduct. I believe it also contains harmful misrepresentations as to the conduct of the other Port employees named in the Report. The Report improperly accused me of civil and criminal violations, and these allegations are not supported in fact or in law and were advanced to harass and maliciously injure me.
4. **Exhibit "D"** — a copy of my response to the Phillips Report which I presented to the Port's Board at a public hearing held on December 19, 2012. My response details the many misrepresentations made by the Phillips Firm in the Phillips Report.
5. **Exhibit "E"** — copy of my public statement dated December 19, 2012, prepared by me in response to the actions by the Port's Board after the Phillips Report was issued.
6. **Exhibit "F"** — a copy of the document titled Phillips Response to Order Re: Discovery dated February 5, 2013, filed in Adverse Action Appeal Case No. 13AA04T (Civil Service Commission). This filing shows that the Phillips Firm has sought criminal prosecution of certain Port employees. These are the same employees that the Firm accused of criminal and civil violations based on the Firm's communications with these unrepresented employees undertaken without disclosing the Firm's adverse interest and representation.
7. **Exhibit "G"** — a copy of a letter from Leonora V. Leon Guerrero to the current Port General Manager Joanne Brown, dated February 21, 2013. In the letter, Ms. Leon Guerrero, who is a Port employee, details recent meetings she had with three attorneys for the Port, where the attorneys interrogated Ms. Leon Guerrero and attempted to get Ms. Leon Guerrero to say that Mary Torres or Vivian Leon falsified Port documents. (This document was previously released to the Press).

Factual Background

In October of 2012, during my tenure as GM, an interoffice memorandum prepared by the Port's safety administrator Mr. Roberto, who was responsible for processing worker compensation claims, requested funding for off-island medical treatment for a Port employee, Ms. Bemadette Meno. The

inter-office memo also included a travel request and authorization (“TA”). Because this inter-office memo and TA involved a work-related injury, I will refer to this matter generally as the “worker’s compensation claim.”

As the GM, I proceeded to address the claim in accordance with the Port’s procedures for handling worker’s compensation claims. The attorneys of the Phillips Firm thereafter commenced an inquiry into Ms. Meno’s claim and contacted various Port employees requesting information regarding the claim and the handling of the claim by the Port’s management.

At the conclusion of the investigation, the Phillips Firm prepared two reports (collectively the Phillips Report), which detailed the actions supposedly taken by me (and other Port employees) with regard to the handling of the worker’s compensation claim. The Phillips Report was not signed by any particular attorney of the Phillips Firm, but it appeared from the Report that the Report was prepared by Attorney Bell, under supervision of Attorney Phillips.

As a result of this Phillips Report, I was effectively terminated as GM of the Port, and six other employees were also terminated via Adverse Action notices.

Conduct by Attorneys Bell and Phillips in Violation of the Ethics Rules

I believe the Phillips Firm and their attorneys committed ethical violations during the investigation and in their preparation and distribution of the Phillips Report.

First, the **Phillips Report contained multiple misrepresentations concerning my actions, and, based on these misrepresentations, wrongly accused me of violating civil and criminal statutes.** Please refer to my December 19, 2012 statements (attached as Exhibits “D” and “E”), which responded to many of the specific findings of fact and conclusions of law contained in the Phillips Report, and details the misrepresentations the Phillips Firm makes in the Report.

Second, the Phillips Report, which **(i) detailed the actions of seven Port employees (including me), accusing most of them, including me, of criminal and civil liability, (ii) contained misrepresentations as explained above, and (iii) contained Ms. Meno’s confidential personnel and medical information, was disclosed to third parties.**² The Phillips Report was provided to me, to the Board members, and I believe also to the six other terminated employees. Attorney Bell emailed me the Reported Slip and Fall (Exhibit B) on November 30, 2012, the accompanying exhibits on December 2, and the Findings of Fact and Conclusions of Law (Exhibit C) on December 4. Attorneys Phillips and Darleen Hiton of the Phillips Firm and all Port Authority of Guam Board members, namely, Daniel J. Tydingco, Michael Benito, Michelle “Shelley” Gibson, Christine Baletto and Eduardo Ilaio, were also copied on these respective emails.

Third, as the Phillips Report and emails from the Phillips Firm show, **the Phillips Firm and its Attorneys, without disclosing their potential and/or actual adverse interest, used their communications with the employees of their client, the Port, as grounds to conclude that the Port’s employees committed criminal and civil violations.** Even more troubling is that the Phillips Firm, explaining the identity of the client and their apparent adverse interests, obtained information and documents from these unrepresented employees which were later submitted to the Attorney General of Guam, the United States Attorney and the Federal Bureau of Investigation for potential criminal prosecution. See Phillips Response to Order Re: Discovery dated February 5, 2013 Civil

² Ms. Meno has consented to me providing a copy of the Phillips Report and attachments.

Service Commission Adverse Action Appeal Case No.13AA04T (Exhibit F hereto). This was done without any forewarning by the Phillips Firm concerning the potential ramifications of the employees' communications with the Phillips Firm. The Phillips Firm misled the employees to their prejudice, concerning the identity and interests of the client that the Phillips Firm represented, and the Phillips Firm knew, or reasonably should have known, that the unrepresented employees misunderstood the Phillips Firm's role in the matter.

One such communication between the attorneys for the Phillips Firm and Port employees, which has adversely affected me, occurred on or about October 19, 2012. On that date, John Bell came to the Port seeking documents relating to the worker's compensation claim. In my presence, Mr. Bell asked another Port employee, Ms. Leon, for the files relating to Ms. Meno's worker's compensation claim. In response to Mr. Bell's request, I gave Ms. Leon instructions as to how to address Mr. Bell's request.

At no time did Mr. Bell inform me (or Mrs. Leon), that we were subject to the Phillips Firm's investigation. Yet, in the Phillips Report, the Phillips Firm cited my communications and interactions with Attorney Bell as a basis for civil and criminal liability. Specifically, the Phillips Report states: "When Mr. Bell insisted he get whatever they then had per the Board's instructions, Ms. Leon only handed it over after she and Mrs. Torres stepped out of the room for a private conference."

The Phillips Report then concludes that as result of these and other actions, I "inhibited the investigation into the matter" and "withheld documents," and that these actions amounted to a "cover-up" for which I may be charged with the misdemeanors of "Forgery, Tampering With Public Records, Misapplication of Entrusted Funds, Official Misconduct, Unsworn Falsifications, and Obstructing Government Functions," and the Third Degree Felonies of "Forgery, Unlawful Influence, and Tampering With Public Records."

The Phillips Firm facilitated my misunderstanding of their adverse role in the matter through email communications to me and other Port employees, where Attorney Bell sought the aid and assistance of the Port's employees with regard to the worker's compensation claim. For instance, Attorney Bell sent several emails to me and other Port employees, including employees accused of committing criminal and civil violations such as Ms. Francine Rocio, requesting documents pertaining to Ms. Meno's claim, thanking the respective employees for our help. From my recollection these emails were sent on October 30, 2012 and November 6, 2012.

Attorney Bell continued to mislead me (and other Port employees) as to his true adverse role in other email communications. In an email which I believe was sent on November 2, 2012, from Attorney Bell to me and Port employees Vivian Leon, Francine Rocio, and Frank Roberto, Attorney Bell stated that Ms. Meno should be examined by an independent medical examiner, and that such action was needed in order to expedite her treatment as quickly as possible. Attorney Bell then sent a follow-up email to me, which I believe was the next day, explaining that in requesting that Ms. Meno submit to an independent medical exam, he was not trying to make things difficult. He explained that it was unfortunate that Ms. Meno had to undergo the review and that it was everyone's intent that she get the medical care that she needs as quickly as possible and to make everything right.

Attorney Bell's emails would lead any recipient of these emails to believe that Bell was seeking the assistance of the Port's employees to resolve the worker's compensation matter, and that the Phillips Firm had the goal of successfully processing Ms. Meno's worker's

compensation claim so that she could get the medical care she needed as quickly as possible and to make everything right.

From these communications, it would not be reasonable for any of the recipients (including me) to think that Attorney Bell or the Phillips Firm represented an adverse party (the Port or Board) in connection with an internal investigation as to possible wrongdoing in connection with the worker's compensation claim. **Without disclosing his adverse representation in these communications, the Phillips Firm nonetheless used his communications with me (and the other Port employees) as grounds to support its findings in the Phillips Report that I (and other employees) committed criminal and civil violations in handling the worker's compensation matter.**

Relevant Rules of Professional Conduct

As I explain below, I believe that the Phillips Firm violated multiple rules of the Guam Rules of Professional Conduct ("Ethics Rules") while handling its investigation of a workplace injury and the worker's compensation matter at the Port Authority of Guam. These Ethics Rules include:

- **Rule 3.1 (Meritorious Claims And Contentions),**
- **Rule 4.3 (Dealing With Unrepresented Person),**
- **Rule 4.4 (Respect For Rights Of Third Persons), and**
- **Rule 8.4 (Misconduct)**

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...

Comment 1 to the ABA's Model Rule 3.1 states that "While the advocate has a duty to use legal procedure for the fullest benefit of the client's cause, he also has a concomitant duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. Rule 3.1 prohibits an advocate from asserting frivolous claims."

Rule 3.1 applies to proceedings other than formal litigation. *See* ADMONITION NO. 02-11, 2002 32254517 (Ma st. Bar. Disp. Bd. 2002) (groundless settlement demand letter under c.93A by respondents in a civil dispute advanced a frivolous claim in violation of Mass. R. Prof. C. 3.1).

"A lawyer who threatens criminal prosecution that is not well-founded in fact or law or threatens such prosecutions in furtherance of a civil claim that is not well-founded," violates Rule 3.1. *see* Alaska Ethics Opinion No. 97-2, 1997 WL 411805, * 2 (Alaska Bar. Assn. Eth. Comm., Mar. 6, 1997; Board of Governors, Mar. 29, 1997); *In re Smith*, 236 P.3d 137, 143-44 (Or. 2010) (position lawyer took was frivolous, supporting finding that attorney violated professional rule prohibiting a lawyer from asserting an issue without a basis in law and fact); *In re Conduct of Lewelling*, 678 P.2d 1229, 1231 (Or. 1984) (attorney who "threaten[s] to present criminal charges solely to obtain an advantage in a civil matter" is a "violation of a more serious nature," an "intimidating tactic that is an abuse of our legal processes").

Responsible attorneys are charged with being able to recognize, based on the facts and circumstances, a genuinely frivolous claim. This is indicated by the Terminology provision of Rules, which states that knowledge “may be inferred from the circumstances.” Guam R. Prof. cond., Rule 1.0.

In the Report, the Phillips Firm, acting through its attorneys Bell and Phillips, made conclusions that I violated civil and criminal laws. These conclusions formed the basis of my termination from my position as the GM of the Port. As explained above, the conclusion that I violated the law was based on false statements as to my handling of the worker’s compensation claim. **The Phillips Firm violated Rule 3.1 by making claims that I violated the law, where such claims were based on misstatements and serious mischaracterizations of the facts pertaining to my involvement in handling the worker’s compensation claim.**

Even assuming the factual findings made by the attorneys in the Phillips Report are taken as true (which they are not true as explained in detail in my December 19, 2012 Statements, Exs. D and E), there can be no colorable, good faith claim that these facts amount to a violation of the criminal and civil laws cited in the Phillips Report.

Frivolous Allegations and Accusations:

The Phillips Report alleged that I may be charged with Forgery under 9 GCA § 46.10. The forgery statute requires a finding that a person, with intent to injure or defraud, makes a false instrument or alters an existing one so that the instrument purports to be an authentic creation of its maker. *See* 9 GCA § 46.10. In order to establish forgery, there must be a showing that I created or altered an instrument purportedly authored by another person. The Report states broadly and without any support that “the per diem and length of stay was altered by management without Mr. Roberto’s knowledge or approval.” *See* Phillips Report, Ex. C. There is no allegation that I made these alterations. There are simply no facts in the Phillips Report to support any finding that I committed the criminal act of forgery.

The Phillips Report alleged that I may be charged with Misapplication of Entrusted Funds under 9 GCA §46.70. To prove an offense under the statute, there must be a showing that I applied or disposed of property of the government, in a manner which “is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.” 9 GCA §46.70. There are no allegations in the Phillips Report that any government property was actually “applied or disposed of” relating to Ms. Meno’s October 2012 work-related injury claim. The Report states that I approved leave and certain payments for the work-related injury; however, the Report also states that no actual money or checks were disbursed or released. The only other allegation in the Report regarding the payment of government funds is the statement that expenses were incurred by arranging the flight with a travel agency. However, the Report does not allege that I made any travel arrangements. The facts stated in the Report, even if accepted as true, do not establish that I may be charged with a violation of 9 GCA 46.70.

The Phillips Report alleged that I may be charged with the crime of Unlawful Influence under 9 GCA §49.40. The crime of unlawful influence “is addressed to the problem of the solicitation of benefits by one who is not a public servant for the ostensible purpose of improperly influencing a public servant in the performance of his official function.” Comment, Title 9 Chapter 49. In order to be charged with Unlawful Influence, there must be a showing that a person either offered a benefit to or accepted a benefit from another person in exchange for improperly influencing (or attempting to

so influence) a public servant in the performance of his official duties. *See* 9 GCA §49.40. There are no allegations in the Phillips Report that I either offered to confer a benefit on anyone, or that I accepted a benefit from anyone, in exchange for improperly influencing a public official. There is nothing in the Phillips Report that would give rise to a claim that I committed the crime of Unlawful Influence.

The Phillips Report again improperly alleged that I committed the offence of Tampering With Public Records under 9 GCA §955.10. The tampering offense requires a finding that I knowingly made a false entry in or altered a document kept as a government record, knowingly used a false record with the intent that it be taken as genuine, or intentionally destroyed, removed, concealed, or impaired the availability of a government document. *See* 9 GCA §55.10. Again, the Phillips Report does not make any specific factual allegation that I made a false entry in any government document, that I used a false record with intent that it be taken as true, or that I personally destroyed or concealed any public record. The facts as alleged in the Report, even if taken as true, do not establish even a colorable claim that I violated 9 GCA §55.10.

In addition to the frivolous allegations that I violated criminal laws, the Phillips Report also accuses me, without any colorable basis in law or fact, of violating 5 GCA § 22401, which prohibits expenditures which are not for an authorized purpose or exceeds the budgeted amount for such expenditure. However, Title 5 GCA §22401 concerning “Illegal Expenditures” applies only to funds appropriated by the legislature and not to Port funds that were not appropriated.³

In accusing me of violating the criminal and civil statutes without any basis in law or fact, the Phillips Firm, and its attorneys Bell and Phillips, violated Rule 3.1.

RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS.

RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS.

In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person;...

Rule 4.1 prohibits lawyers from making false statements to others. “Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.” Model Rules 4.1, Cmt. 1.

This Rule applies to statements to clients as well as third parties, *see* Comment to La. Rules of Prof. Conduct⁴, modeled after ABA Model Rules (“This rule covers not only statements made to adverse counsel and adverse parties, *see, e.g.,* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 95-397 (1995), but also to clients and other persons.”), and applies to

³ *See* 7 GCA §22401 (a)(6)(A)(6) (providing that “As used in this Section, the term appropriation means the funds allocated by the Legislature which directs how the amount, manner and purpose of the funds are to be used.”). This interpretation is supported by *Santos v. Calvo*, 1982 WL 30790 (D. Guam App. Div. 1982), which interpreted Government Code §6118, which is the predecessor of 5 GCA §22401, as applying to funds appropriated by the legislature. The interpretation is also supported by *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶¶ 16-18, which noted that the federal anti-deficiency statute, 31 USC §1341, the language of which is tracked in 5 GCA §22401, was meant to address the problem of the executive branch obligating the government prior to an appropriation by the legislature. This purpose of the statute as recognized by the Pangelinan Court supports the notion that § 22401 applies only to appropriated funds. The alleged funds at issue with Ms. Meno's work-related injury claim were Port funds, and not any funds appropriated by the legislature. There is accordingly no basis in law or fact to support the conclusion in the Phillips Report that I violated 5 GCA § 22401.

⁴ Found at http://malegaethics.org/?page_id=367.

statements made by a lawyer as part of an investigation, *see* Phil. Bar Assoc. Opinion 2009-02 (Mar 2009).

Accordingly, a lawyer violates Rule 4.1 if he directly or indirectly (by omission or misleading statements) makes misrepresentations in reports to clients and others. As explained above and in my December 19, 2012 statements (attached as Exhibits “D” and “E”), **the Phillips Report misstated the facts, and omitted true facts, regarding my actions in handling the worker’s compensation claim.** The Report was provided to others, including the Board and other employees of the Port.

Attorney Bell also made misrepresentations as to his role and intent in his communications to the Port employees, by falsely stating or implying in emails to me and other Port employees that he intended to favorably resolve Ms. Meno’s worker compensation claim. It is evident from the Phillips Report (Exs. B and C) and the Phillips Firm’s interrogation of and threats to a Port employee (Ex. G), that Attorney Bell had no such intent. **The Phillips Firm and its attorneys violated Rule 4.1 by misrepresenting to third parties their role, adverse position, and adverse intentions in this matter.**

A lawyer also violates Rule 4.1 if he threatens criminal prosecution where he knows the facts do not support such charges. *See* Utah State Bar Ethics Advisory Opinion Committee: Opinion No. 03-04, 2003 WL 23146204, * 3 (Oct. 14, 2003); *see also In re Myers*, 981 P.2d 143, 144 (Colo. 1999)⁵ The Phillips Report not only contained material misrepresentations of fact, but also concluded that I violated criminal laws based on these false facts.

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS:

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person

“[A]n off-hand threat without any informed opinion that criminal charges are well-founded may violate Rule 4.4.” UT Eth. op. 03-04, 2003 WL 23146204, * 2 (Utah St. Bar. Oct. 14, 2003).

In the Phillips Report (Ex. C), the Phillips Firm states that “all persons identified were afforded ample time and opportunity to come clean earlier but chose not to.” *See* Exhibit C. This statement suggests that further proceedings, whether criminal or civil proceedings, or proceedings facilitating the firing of the employees, would not be initiated if the Port’s employees cooperated in the manner demanded by counsel.⁶

⁵ Disciplining an attorney who indirectly threatened a complaining witness in a theft case by stating that the attorney would use a nonexistent criminal record against the complaining witness if the case went to trial, and asserting that the witness was as guilty as the defendant because the witness failed to follow the law in signing a confession which “could reasonably be construed as a threat that criminal charges would be lodged against him,” and finding a violation of Rules 4.1, 8.4(d), and 8.4(h)).

⁶ In fact, the employee who was responsible for worker's compensation at the Port (Mr. Roberto) and who initiated payment of Ms. Meno's claim, was not accused by legal counsel of any wrongdoing in the Phillips Report, notwithstanding that Attorney Bell sent a prior email, on approximately October 3 1, 2012, stating that Bell thought Mr. Roberto did not understand the requirements of the worker's comp administration and that Mr. Roberto was basing decisions regarding Ms. Meno's claim on erroneous factual and legal conclusions.

As I stated in my December 19, 2012 statement, the Port's Board had an agenda against Ms. Meno, and ultimately wanted to fire her.

However, threatening either criminal or civil proceedings against me (and other Port employees) to gain leverage for a client in an unrelated legal matter (here, the plan to fire Ms. Meno), violates Rule 4.4 where the threat is made with "no substantial purpose other than to embarrass, delay, or burden a third person" or is used as a method of "obtaining evidence that violate[s] the legal rights of such a person."

See Robertson's Case, 626 A.2d 397, 400 (N.H. 1993) (accusing attorneys of serious crimes (25 felonies) for purpose of intimidating settlement and embarrassing and burdening attorneys warrants disciplinary action).⁷

The Phillips Firm's threat of retaliatory action for an employee's lack of cooperation with legal counsel's agenda is clearly evident in the Firm's dealings with Port employee Leonora Leon Guerrero. *See Ex. G* (2/21/13 letter from Ms. Leon Guerrero to Port GM Joanne Brown). Ms. Leon Guerrero sent a letter to the Port's General Manager dated February 21, 2013, explaining that three of the Port's lawyers interrogated her during interviews held in January of 2013, and tried to get Ms. Leon Guerrero to state that "Mary Torres or Vivian Leon 'directed'" her "to alter" documents relating to Ms. Meno's workers compensation claim. *See Ex. G*. Ms. Leon Guerrero stated that when she explained to the attorneys that no one had "directed" her to do anything, the attorneys "became upset." *See Ex. G*. Shortly thereafter Ms. Leon Guerrero was given a notice of proposed adverse action. *See Ex. G*. The Phillips Firm engaged in "abusive treatment of a witness" when they demanded that Ms. Leon Guerrero present false evidence and when they got "upset" when she refused to do so.

According to Ms. Leon Guerrero, as a direct consequence of refusing "to lie on behalf of the Port's counsel," Attorney Phillips directed another Port employee, Paul Salas, to tell Ms. Leon Guerrero that she would lose her job and would be criminally prosecuted. *See Ex. G*. Shortly thereafter, Ms. Leon Guerrero was issued a notice of proposed adverse action. Such abusive and threatening tactics, used to procure favorable evidence in connection with the Board's claim against Ms. Meno, violated Rule 4.4. *see UT Eth. op. 03-04*, 2003 WL 23146204, * 1 (Utah st. Bar. Oct. 14, 2003) (opining that a lawyer may not threaten to bring criminal charges against an opposing party or a witness while negotiating a civil matter if the threat..."constitutes 'extortion,' if the lawyer does not have a reasonable belief that such charges are warranted by the law and the facts, or if it involves 'abusive treatment' of a witness").

RULE 4.3: DEALING WITH UNREPRESENTED PERSON

RULE 4.3: DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct

⁷The Report prepared by the Phillips Firm, attached as Exhibit C, is titled "Findings of Fact and Conclusions of Law", which is a title normally used by a judicial tribunal. The report was provided to lay persons, including myself, members of the Board, and, I believe, the six terminated employees. The title of the report is clearly threatening because it leaves the distinct impression to any lay person (certainly the Port's employees) that the report was issued by a person with adjudicative authority.

the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

See also **RULE 1.13: ORGANIZATION AS CLIENT**

... (d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

Under Rule 4.3, in dealing with third persons, a lawyer must disclose any adverse relationship between the lawyer's client and the third person. *See* Arizona Ethics Opinion No. 87-25 (Dec. 30, 1987)⁸

As explained in a leading authority (ALI-ABA), a lawyer's duty to fully disclose potential conflicts applies in the context of investigations of employees:

Lawyers may interview an unrepresented party so long as the attorney's role and potential conflicts of interests are made clear...

One area in which a labor lawyer must be especially careful is when he or she represents a company and interviews an employee with whom the company may have a conflict of interest, for example, an employee accused of discrimination by another employee who plans to bring suit... Also, if an attorney uses an investigator to conduct the interview, the investigator must reveal on whose behalf he is working.

A similar rule requiring a lawyer's disclosure of his interests in dealings with third persons is contained in 103 of the Restatement (Third) of the Law Governing Lawyers. Comment *c* to the §103 explains that: "This Section applies to a lawyer's dealings with both unrepresented nonclients of adverse interest and those of apparently congruent interest. The Section applies to a lawyer's work in litigation, transactions, and other matters. It also applies to a lawyer representing a corporation or other organization in dealing with an unrepresented nonclient employee or other constituent of the organization." Rest (3d) Law Governing Lawyers, §103, cmt. *c*.

In his interactions with me, **Attorney Bell did not disclose that he was investigating me for potential criminal or civil wrongdoing. Attorney Bell did not ask me whether I was represented by legal counsel, nor did he inform me at any time that I should consult with my own counsel.** At the time of these interactions, the Phillips Firm was the attorney of record for the Port, and I was

⁸ Found at: <http://www.azbar.org/Ethics/EthicsOpinionsNewEthicsOpinion?id=574>. ("In this case, the attorney not only knows that the unrepresented defendant misunderstands the lawyer's role, he is deliberately creating a situation in which the defendant will be unaware of their adversarial relationship in order to obtain a potentially prejudicial statement from her, before she realizes that she should consult with counsel. ER 4.3 obligates an attorney to make a reasonable effort to correct an inadvertent misunderstanding of this sort; a fortiori, ER 4.3 implicitly prohibits an attorney from deliberately creating such a misunderstanding.

the General Manger. I had no reason to believe that Attorney Bell was pursuing actions on behalf of the Port's Board adverse to me, particularly since I served as the General Manager of Attomey Bell's client, the Port. In fact, Attomey Bell sent various emails to me and other Port employees stating that his intent was to assist in facilitating Ms. Meno's medical treatment, and requesting and thanking us for our assistance in gathering information relevant to the worker's compensation claim and to make everything right. These emails indicated to me that he was not representing an adverse party or taking an adverse position. Attorney Bell nonetheless cited my dealings with him as grounds for the Phillips Firm's conclusions that I violated civil and criminal law. The Phillips Report also accused other Port employees of criminal and civil violations (including Vivian Leon and Francine Rocio), notwithstanding that Attorney Bell sent emails to these employees failing to disclose his adverse interest and implying that his interests were to facilitate the processing of Ms. Meno's claim.

By failing to disclose the true nature of Attomey Bell's investigation, and particularly that I was being investigated for possible wrongdoing in connection with the worker's compensation matter, the Phillips Firm, and attomeys Bell and Phillips, violated Rule 4.3.

RULE 8.4: MISCONDUCT

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;... (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice;

Finally, the actions of the Phillips Firm and their attorneys Bell and Phillips also violate Rule 8.4. **By including material misrepresentations and by seriously mischaracterizing my actions** with regard to my handling of the worker's compensation claim in the Phillips Report, the firm, and its lawyers responsible for the Report (Bell and Phillips), **engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation."** Guam R. Prof. Cond., Rule 8.4(c). In working together to prepare and issue the Report, the attomeys Bell and Phillips "knowingly assist[ed] or induce[d] another to" violate the Rules of Professional Conduct. Guam R. Prof. Cond., Rule 8.4(a). By supervising attomey Bell and in authorizing the Report, attomey Michael Phillips violated Rule 8.4(a).

Furthermore, by interacting with me (and other Port staff) yet failing to disclose during such interactions that the Firm was investigating my actions (as well as the actions of other Port employees), Attomey Bell violated Rule 4.3, as discussed above, as well as Rule 8.4(d). See Arizona Ethics Opinion No. 87-25 (Dec. 30, 1987)⁹

⁹ Found at: <http://www.azbar.org/Ethics/EthicsOpinionsNewEthicsOpinion?id=574>. ("In this case, the conduct in question would fall squarely within the parameters of ER 8.4(c). By deliberately withholding the fact that the person being interviewed was a named defendant in the lawsuit, an attorney would create the impression that he was conducting a witness interview rather than obtaining information to be used against the defendant in an adversarial proceeding. As in Milita, if the defendant was aware of the true nature of the communication, she probably would not consent to the interview, much less its tape-recording. In any event, she would be denied the opportunity to make an informed choice. The attorney's failure to disclose the existence of the adversarial relationship between his client and the defendant would be at best misrepresentation and deceit, and at worst fraud, under the Rules.").

Rules 8.4(c) and (d) likewise prohibit the lawyer from dishonestly stating that another person has violated the law. *See* UT Eth. op. 03-04, 2003 WL 23146204, * 3 (Utah st. Bar. Oct. 14, 2003).

Most disturbingly, according to the February 21, 2013 letter from Ms. Leon Guerrero to the Port's current General Manager, the attorneys of the Phillips Firm continued to engage in actions severely prejudicial to the administration of justice, in violation of Rule 8.4. Ms. Leon Guerrero has stated that attorneys of the Firm interviewed her in January of that year regarding Ms. Meno's claim, and that the attorneys demanded that she state that "Mary Torres or Vivian Leon" directed her to alter government documents. Ex. G. Ms. Leon Guerrero claims that when she refused to lie, the attorneys became upset. Ex. G. Attorney Phillips then directed another Port employee, Paul Salas, to tell Ms. Leon Guerrero that she would lose her job and would be criminally prosecuted. Ex. G. Ms. Leon Guerrero was thereafter served with a notice of proposed adverse action. She responded to the allegations and complained about the heavy-handed threats by Attorney Phillips. She was subsequently terminated. These actions, amounting to threats against a witness, clearly violate Rule 8.4(d).

Conclusion

I believe that the Phillips Firm and Attorneys Bell and Phillips acted unethically in their investigation of the worker's compensation claim as attorneys for the Port. They made misrepresentations, and misstated facts concerning my involvement with the worker's compensation claim which any reasonable person operating under even the most minimal standard of diligence would have known were false. They prepared and distributed to third parties reports containing misrepresentations as to my involvement in the worker's compensation claim. They wrongly accused me of violating the law based on facts, which, even if true, would not support the alleged criminal or civil violations.

When dealing with me, they failed to advise me that they were investigating me on behalf of the Port or its Board, and failed to advise me to consult with legal counsel to represent my interests, and thereafter used their communications and dealings with me as the basis of their serious allegations that I engaged in civil and criminal and transmitted information and documents received from me to law enforcement agencies. I believe that these actions by the Phillips Firm and Attorneys Bell and Phillips rise to the level of ethical violations. Moreover, the Phillips Firm and Attorneys Bell and Phillips knowingly engaged in such conduct in violation of their duties owed as professionals with the intent to obtain a benefit for Phillips Firm or another and caused serious injury to these employees and to the integrity of the legal process.

In short, I firmly believe a review of the foregoing is essential to a thorough reexamination of the cases the Port's General Manager has tasked you with. Thank you for your consideration. As always, I remain available to discuss this matter at greater length, should you require it, and can be reached at the addresses and numbers indicated above.

Sincerely,

Mary C. Torres