



March 5, 2024

**Honorable Therese M. Terlaje**

Speaker & Chairperson, Committee on Health, Land, Justice & Culture  
*Mina'trentai Siette Na Liheslaturan Guåhan*  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

**Subject: Enforcement of Civil & Criminal Laws; Proposed Legislation;  
Emergency Session**

*Hafa Adai* Madam Speaker Terlaje:

We respectfully ask for your consideration, introduction and support of the attached proposed legislation intended to address the apparent “conflict of interest” and “imputed disqualification” rules that interfere with the Executive Branch AG’s ability to perform the duties required by Guam law.

We understand these issues are the subject of an Emergency Session called for tomorrow. We believe the attachment will assist in resolving the important pending procurement issues.

Please feel free to contact the undersigned Attorney General if you have any questions. Thank you.

Respectfully,

**Douglas B. Moylan**  
Attorney General of Guam

Attachments (6)  
All Senators, 37<sup>th</sup> Guam Legislature

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**“Guam’s Toughest Law Enforcers”**

MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN  
2024 (SECOND) Regular Session

Bill No. \_\_\_\_\_ (\_\_\_\_)

Introduced by:

(MAIN SPONSORS)

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AN ACT TO ADD § 30109.1 TO DIVISION 3, ARTICLE 1, CHAPTER 30 OF TITLE 5, AND TO AMEND § 5150 OF SUBARTICLE F OF CHAPTER 5 OF TITLE 5, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING NO CONFLICT OF INTEREST OR IMPUTED DISQUALIFICATION OCCURS WHEN AG PERFORMS HIS DUTIES FOR THE GOVERNMENT OF GUAM/ PEOPLE OF GUAM.

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*

3 herby finds that the Attorney General of Guam is an Organic Act of Guam  
4 official that serves a crucial function for the People of Guam. Congress  
5 mandated that the Attorney General is the Chief Legal Officer of the  
6 Government of Guam. Guam has chosen to require the Attorney General to  
7 serve both as a Public Prosecutor and as a Legal Representative for the People  
8 of Guam, consistent with the Federal Attorney General and several other  
9 smaller States who have relatively small populations. The Attorney General is  
10 an Executive Branch officer charged with enforcement of Guam's laws on  
11 behalf of the People of Guam, an Executive Branch function.

1           This system has served the People of Guam for decades and saved  
2 millions of dollars to the taxpayers. A single Attorney General has also  
3 centralized legal policy and avoided the tendency to empire building by  
4 different competing offices.

5           A question has arisen worthy of clarification, namely that the Guam  
6 Legislature finds and intends that the Attorney General of Guam shall  
7 represent only the Government of Guam, which is synonymous with the  
8 People of Guam, and not any public official when the Attorney General  
9 executes his duty to enforce Guam law and to provide legal services to public  
10 officials. No legal relationship shall exist between the People of Guam's  
11 attorney or his deputies and assistants, nor his office, and any public official  
12 that would disqualify him or his office. As an official in the Executive Branch  
13 executing Executive Branch duties, the professional rules otherwise applicable  
14 to private attorneys were never intended and shall not apply to the People of  
15 Guam's Attorney General of Guam. This involves a Separation of Powers  
16 between our branches of government.

17           Public officials always remain as stewards and representatives of the  
18 Government of Guam & People. The Attorney General of Guam's duty to  
19 always represent the legal interests of the Government of Guam and People of  
20 Guam remains unaffected when public officials communicate with the AG,  
21 and the government officials remain as representatives of the Government  
22 and People. Rules of Professional Conduct cannot interfere with the duties of  
23 the Attorney General of Guam as set forth by the U.S. Congress and this  
24 Legislature in the AG's execution of his Executive Branch duties to enforce

1 our People's laws. To do otherwise not only defeats the Guam Legislature's  
2 intent for only one Attorney General of Guam and the mandate of the  
3 electorate who express the political will to have certain policies enacted, but  
4 also appears to interfere with the Congressional mandate that there shall be  
5 only one Attorney General of Guam who shall be the Chief Legal Officer of  
6 the Government of Guam.

7 **Section 2.** Section 30109.1 is hereby *added* to Division 3, Article 1,  
8 Chapter 30 of Title 5 of the Guam Code Annotated to read as follows:

9 **"Section 30109.1. Privileges and Conflicts of Interest.** In  
10 fulfilling the Attorney General of Guam's various civil and criminal  
11 prosecution duties as set forth in Guam law, the Attorney General of  
12 Guam, his deputies, assistants, representatives and office shall always  
13 be deemed as representing only the People of Guam / Government of  
14 Guam. In no event shall a disqualifiable conflict of interest exist, or any  
15 attorney-client or other privilege be asserted, that any public official  
16 may exercise to disqualify the Attorney General of Guam, or his  
17 deputies, assistants, representatives or office from continuing to  
18 represent the Government of Guam / People of Guam. This shall  
19 include situations where that public official may be or later become  
20 under criminal or civil investigation, and where that public official may  
21 have been or be provided legal advice and/or services as an employee  
22 or representative of the Government of Guam. Moreover, no attorney-  
23 client relationship shall exist between the Attorney General, or his  
24 deputies, assistants, representatives and office, and that public official in

1 that public official's personal capacity. The public official shall always  
2 remain only a steward of the Government of Guam / People of Guam,  
3 and the Attorney General of Guam remains the attorney for the  
4 Government of Guam / People of Guam, *not* for that public official, and  
5 always capable of enforcing Guam's laws.

6 No imputed disqualification or other conflict of interest occurs  
7 when the Attorney General provides legal services to any public official  
8 and prosecutes that public official for breaking Guam law, either before  
9 or after having provided legal services to that public official.

10 This Section shall not be construed to interfere with continuing to  
11 allow the Attorney General and his office to represent public official as  
12 agents of the Government of Guam / People of Guam for acts that they  
13 may take on behalf of or in service of the Government of Guam / People  
14 of Guam.

15 **Section 2.** Section 5150 of Subarticle F of Chapter 5 of Title 5 of the  
16 Guam Code Annotated is hereby *amended* to read as follows:

17 **"5150. Duties of the Attorney General.** The Attorney General,  
18 the Deputy Attorney General or such Assistant Attorneys General, or  
19 such Special Assistant Attorneys General as the Attorney General may  
20 designate, shall serve as legal counsel and provide necessary legal  
21 services to the Policy Office and the General Services Agency. Whenever  
22 the Chief Procurement Officer, the Director of Public Works, or the head  
23 of any executive branch agency, autonomous agency, instrumentality or  
24 public corporation of the government of Guam conducts any solicitation

1 or procurement which is estimated to result in an award of Five  
2 Hundred Thousand Dollars (\$500,000) or more, the Attorney General or  
3 his designees, including one (1) or more Special Assistant Attorneys  
4 General who may be so designated or appointed by the Attorney  
5 General and subject to any reasonable requirements or conditions  
6 determined by the Attorney General, shall act as legal advisor during all  
7 phases of the solicitation or procurement process. The Attorney General,  
8 or his designee, including one (1) or more Special Assistant Attorneys  
9 General shall, in addition, when he approves contracts, determine not  
10 only the correctness of their form, but their legality. In making such a  
11 determination of legality, he may require any or all agencies involved in  
12 the contract to supply him with evidence that the required procedures  
13 precedent to executing the contract were carried out. He or his designees  
14 may prescribe the forms and format required to be followed by the  
15 agencies in aiding him in his determination of form and legality.

16 To clarify the status and relationship of the Attorney General with  
17 regard to review of procurement documents, the Attorney General's  
18 review is solely for the protection of the Government of Guam / People  
19 of Guam's legal interests. Public officials shall not be able to claim the  
20 attorney-client privilege or any other privilege is created when the  
21 Attorney General reviews and approves or rejects the procurement  
22 documents submitted to the Attorney General for review. Any review  
23 by the Attorney General of the procurement documents submitted to his  
24 office shall not prevent the Attorney General from later prosecuting

1 persons in a civil or criminal proceeding associated with that  
2 procurement, including but not limited to situations wherein additional  
3 information becomes available which was not earlier known to the  
4 Attorney General.

5 **Section 2. Severability.** If any of the provisions of this Law, or  
6 the application thereof to any person or circumstance, is held invalid,  
7 such invalidity shall not affect any other provision or application of this  
8 Law which can be given effect without the invalid provision or  
9 application, and to this end the provisions of this Law are severable.