

Re: Torres litigation query

Nicolas Toft

Nov 9, 2022,
3:27 PM (8
days ago)

to Catherine, me, Anita, Jeffrey, Mara, Maria, Antolin, Ronald, Nicolas, Louisa, Ron, Angela, Joey

Good afternoon,

I've received a response from the Litigation Deputy Attorney General regarding the dismissal of the Torres litigation cases, and am forwarding it to you now. I've discussed the matter with DAG Canto in order to gain a better understanding of the underlying issues in the cases, and will attempt to answer any questions you may have.

-Nick

Hafa Adai Nick:

I am responding to the inquiry you forwarded to me from the Guam Ancestral Lands Commission (GALC), inquiring as to why the Office of the Attorney General (OAG) did not consult with the GALC regarding a settlement agreement that, in part, dismissed Superior Court of Guam case no. CV1124-09, *Gov't of Guam v. Geraldine T. Gutierrez, et al.* ("the case").

The primary reason that GALC was not consulted is that GALC was not a party to the case. Specifically, the GALC was not the plaintiff in the case. The plaintiff was the Government of Guam, represented by the OAG. As Assistant Attorney General William Bischoff explained to the court at a hearing in a related probate case, Superior Court case no. PR0220-50, *In the Matter of Jose Martinez Torres*, the OAG did not represent the GALC but, instead, the OAG was independently representing the public interest pursuant to 5 GCA § 30103. Furthermore, the chairperson of the GALC did not verify the initial complaint, nor did the GALC chairperson verify any of the 4 subsequent amended complaints in the case.

Possibly even more importantly, in all 5 iterations of the complaint filed in the case, the OAG alleges that the GALC violated the law (21 GCA § 80104) by exceeding its statutory authority when it deeded real property to the estate of Jose Martinez Torres that was not taken by the U.S. Government after January 1, 1930. It is axiomatic that it would be an unethical conflict of interest for the OAG to represent the GALC in a case where the OAG is trying to prove that its own client (the GALC) broke the law and deeded away government property without any legal authority to do so.

In fact, on December 26, 2007, the OAG filed a motion to amend the Government of Guam's answer to the complaint in a related case, Superior Court case no. CV1093-06, *The Estate of Jose Martinez Torres v. The Gov't of Guam, et al.*, in order to name GALC as a defendant, so that the OAG could sue the GALC for its allegedly illegal act. The OAG later withdrew that motion.

In sum, not only was the GALC not a plaintiff or party to Superior Court case no. CV1124-09, but it would be an unethical conflict of interest to represent them in light of the allegations the OAG made against the GALC in all 5 versions of the complaint it filed in that case. That is why the OAG did not consult the GALC with regard to a settlement agreement that, in part, called for the dismissal of Superior Court case no. CV1124-09, *Gov't of Guam v. Geraldine T. Gutierrez, et al.*

Best regards,

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