



February 28, 2024

Confidential

Honorable Lourdes A. Leon Guerrero

Governor of Guam
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Office of the Governor of Guam
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**Subject: Notice of Possible Conflict of Interest;
Temporary Withdrawal Legal Representation to Protect Public Interest**

Hafa Adai:

The U.S. Congress created and requires the Attorney General of Guam to be the “*Chief Legal Officer of the Government of Guam.*” 48 USC § 1421(g)(d)(1). The Guam Legislature mandated that the elected Attorney General of Guam shall “*prosecute*” corrupt “*public officials.*” See 5 GCA §§ 30104 (*AG prosecutes public officials*) & 30109(a) and (b) (*AG public prosecutor*). The Guam Legislature also required that the AG simultaneously provide the “*Government of Guam*” civil legal representation and services. 5 GCA §§ 30109(c), (f) & (g). *Note also* 5 GCA § 30108(b) (*AG protects Govt Guam above all others & discretion not to defend govt. officials*). The Supreme Court of Guam previously held that the elected AG is subject to the laws passed by the Guam Legislature. See *GIAA v. Moylan*, 2005 Guam 5, ¶ 67. See also *Barret-Anderson v. Camacho*, 2018 Guam 20 (2018). *Supra*. Noteworthy is that consistent with smaller States, Guam’s AG maintains both criminal and civil duties simultaneously.

The Attorney General and attorneys in the AG’s Office are also regulated by the Guam Rules of Professional Conduct that controls the “*ethical conduct*” of attorneys. In government corruption prosecutions defense counsels have asked Superior Court of Guam Judges to proceed with *evidentiary hearings* as to whether it is an ethical violation for the **Attorney General of Guam to prosecute corrupt government officials given that the Office previously provided civil legal services to the** departments that the government official under investigation was or is employed by. These claims are being raised as a violation of the Guam Rules of Professional Conduct for attorneys. An adverse ruling can result in an attorney’s license being suspended or terminated, thereby stopping an attorney from forever thereafter practicing law in that jurisdiction, and financially supporting ourselves and our families (aka *losing our jobs & income*). ***We take our ethical responsibilities very seriously.***

Office of the Attorney General
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“Guam’s Toughest Law Enforcers”

Ongoing corruption cases asserting a conflict of interest to disqualify the elected Attorney General of Guam include *People vs. Arthur U. San Agustin and Masatomo Nadeau* in Superior Court of Guam Case No. CF446-23 (*alleging DPH&SS officials' failure to follow school sanitary health permit laws*) and *People vs. Ybanez, Cruz, et al.* in Superior Court of Guam Case No. CF447-23 (*alleging GMTA hiring & payments without legal authority*). Criminal defense attorneys in these matters argue that no Assistant AG ("AAG") can prosecute any government official where any other AAG has previously provided legal advice on any matter. This conflict issue is not being raised at trial but at the very onset of any investigation. Raising the conflict issue necessitates judicial scrutiny. We have been directed to essentially create 2 law firms, one for civil and one for criminal actions. This is what the Guam Legislature expressly decided not to do, and changes the elected AG's ability to do both functions as the laws required and the People elected the AG to do, vs. appointing another non-elected AG to do.

The Judicial legal scrutiny has temporarily created a *distracting and untenable operating situation* within the Office of the Attorney General, necessitating creating 2 law firms, despite the Guam Legislature expressly deciding not to do so. See 5 GCA § 30104 & § 30109(c), (f) & (g). We have had to create "**mini-castles**" inside the AG's Office, with the People's elected Attorney General of Guam stepping aside from Protecting the People of Guam's legal interests for ½ of the elected AG's duties as required by the U.S. Congress & the Guam Legislature. The danger of violating an ethical rule in a "*legal environment with little legal precedent on Guam*" is too great. ***We 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.*** There are no cases from Guam that directly address this critical legal question.

The elected Attorney General has had to choose between overseeing the prosecution of government officials accused of criminal wrongdoing by Grand Juries, and appointing a different attorney to control the civil direction and control for Government of Guam departments, who the elected AG will not control. The danger of not doing so is what at least 2 Judges are now considering disqualifying the People's elected AG altogether, depriving the People of Guam and voters of their democratic choice of a single Attorney General to prosecute corrupt government officials and to provide legal representation to the People's Government of Guam as an organization. The situation is untenable necessitating our temporarily withdrawing from providing legal services to you whilst the motions and appeals are pending.

The civil legal representation that the AG provides to the Government of Guam ranges from providing legal advice to government officials so they properly administer the People's resources, to protecting the People's / taxpayers monies in defending lawsuits. This also includes fulfilling the Guam Legislatures numerous mandates for the AG, including civil review of procurement contracts to detect and correct errors therein, and issuing legal opinions to that government department or agency. If forced to choose, this AG sees his role as Protecting the People (*aka protecting the public interest*), & their interests above and beyond advising government officials. The ongoing litigation to disqualify the AG attempts to treat the AG as any other private attorney where the AG represents government officials and that the AG is subject to "imputed disqualification." In other words, the AG represents a government official when providing legal advice & legal services to that person as a managing agent of the "Government of Guam," and cannot prosecute that same government official because of the Imputed Disqualification Rule as contained in the Guam Rules of Professional Conduct (i.e. AG has a

“conflict of interest” that would force him to choose). We disagree, and have filed legal briefs in support of our position, consistent with local and Federal law pertaining to the elected AG.

We do not believe that this type of legal ethical walls properly reflects Congress and the Guam Legislature’s enabling laws. See 48 USC § 1421(g)(d)(1) (*AG Chief Legal Officer over the entire Government of Guam*). See also 5 GCA §§ 30104 & 30109(c) & (g). The legal question remains unresolved, and pending a final decision by the Superior Court of Guam and likely the Supreme Court of Guam.

Retired Federal Judge Magistrate Joaquin V.E. Manibusan previously held that if the Attorney General of Guam is faced with a potential conflict, that the AG must:

The Court, however, is not persuaded by the governor's arguments. First, as the Attorney General notes, it was the Governor and the Respondent Directors who "switched sides," first by signing off on the initial settlement agreement and thereafter seeking to vacate the preliminary approval of the settlement agreement. Thus, the alleged conflict was created in part by the Governor's actions. Second, like other courts, this Court recognizes that the Guam Rules of Professional Conduct can not be mechanically applied to the Attorney General's office. The Attorney General is not necessarily prohibited from representing governmental clients whose interests may be adverse to each other because of the unique roles held by the Attorney General.

...
In discussing the Attorney General's roles, the Court stated:

The Organic Act's designation of the Attorney General as Chief Legal Officer of the Government of Guam appears to have adopted basic common law principles regarding the **Attorney General's primary role: that of representing the interests of the government the attorney general represents - in other words, the state interest or the public interest. As chief legal officer of the government, it is this interest that the attorney general must at all times represent. In this respect, it can be said that the attorney general's real client is the state he represents or the public interest he represents. It therefore necessarily embodies the principle that if the attorney general finds his duties to the state and the public interest conflicting with his other duties, it is his duty to represent the state and the public interest which is paramount. In this role, the attorney general's responsibility has generally been regarded as being the protector and guardian of the public interest, i.e., the state or government interest which he advocates.**

...
In addition to his role as representative of the state, the state's interest or the public interest, the attorney general also has the dual role and responsibility of representing the instrumentalities of that 'government, i.e., the agencies and officials in matters in which the said entities are

involved as parties in any litigation. While the Court has noted above that the Organic Act does not expressly reserve to the Attorney General the representation of the Government of Guam's agencies and officials in litigation in which they are involved, it is an implied grant of authority. In order to be the Chief Legal Officer of the Government of Guam, the Attorney General must necessarily be the primary legal counsel for its employees and agencies. (Emphasis added).

Lourdes P. Aguon-Schulte v. Guam Election Commission, et al., Civil Case No. 04-00045, Findings & Recommendation (Docket No. 106) at 9-10.

Attorney General's Nation-wide have been recognized by Courts to provide 3 important services to the community, namely (1) **Protect the Public Interest** above all other interests; (2) **create uniform legal policy** throughout the Government (to avoid "*empire building*" and each govt. official getting a private hourly-paid atty. at taxpayer expense to litigate legal issues each govt. official & their attys. consider important); and (3) **reduce legal expenses** for the taxpayers by being a single law firm with salaried (not hourly) attorneys on payroll.

Because 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. Attached and identified as "**Attachment 1**" is a list of reports issued by the Public Auditor of Guam that call into question the possible criminal and / or civil misconduct of public officials. We also have identified GovGuam Depts. and Instrumentalities in the attachment who are receiving this letter. Our Office also likewise has numerous open investigations into GovGuam Depts. and Instrumentalities based upon those OPA reports and other sources which are included in the attachment (may not be exhaustive & subject to correction).

The legal questions before the Judiciary would have the AG's Office build walls between the elected AG who was chosen by the People / Voters as the Public Prosecutor prosecuting corrupt government officials, and designate another attorney to only handle civil cases, who is not under the control of the one elected Attorney General that was elected. In our view, this is inconsistent with Guam law that requires that there be only 1 elected Attorney General with the trust & Mandate of the People to prosecute corrupt government officials, and *simultaneously* an elected AG trusted to give that same legal advice to public officials (govt. officials) who are stewards / representatives of the People's Government. The Judiciary must support the Legislature's dual mandate as set forth in 5 GCA §§ 30104 & 30109(a), (b), (c), (f) & (g).

Based upon legal precedent by an esteemed Federal Magistrate Judge, *supra*, **this AG chooses to PROTECT THE PEOPLE / PUBLIC INTEREST over that of the public officials who may have broken Guam's civil and criminal laws**. *Supra*. Once the pending motions to disqualify the AG's Office has been decided and the true meaning of 5 GCA §§ 30104 & 30109(a), (b), (c), (f) & (g) (*AG criminally prosecutes corrupt government officials & simultaneously provides civil legal services to their depts.*) reconciled with the Guam Rules of Professional Responsibility (*treatment of private law firms vs. AG's Office*), we will be in a better position to decide if we can re-start legal services to your department or instrumentality.

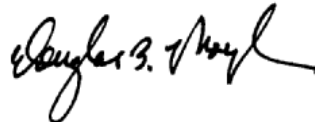
We are therefore providing notice that effective immediately, and until such time as the before-mentioned criminal cases authorize our Office to provide legal representation in both prosecuting government officials accused of corruption and also providing legal advice to that same department or instrumentality that the government official 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. See **Attachment 1**.

We urge you to secure independent legal counsel to provide for your legal needs until such time as the Judiciary, including the Supreme Court of Guam can provide a clear statement on our ability to prosecute government officials and simultaneously provide legal services to Government Depts. & Instrumentalities whose officials are being prosecuted or under investigation by the same elected Attorney General . . . all under the Guam Rules of Professional Conduct.

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.

Also, please be aware, that until further notice that any communications with our Office is to be considered by you as non-privileged and not protected by the Attorney-Client Privilege. By taking this action, we choose to protect our People of Guam and to continue conducting criminal and civil investigations and prosecutions that Protect the Public Interest on behalf of our People, even if that investigation involves public officials. Thank you.

Respectfully,



Douglas B. Moylan
Attorney General of Guam

Attachments (4)
cc: Honorable Therese Terlaje, Speaker, 37th Guam Legislature, &
Chairperson Committee on Health, Land, Justice & Culture

Attachment

1

**OFFICE OF THE PUBLIC AUDITOR
LIST OF REPORTS / AUDITS**

OPA Report No. 24-02	Government-Wide Credit/Debit Card Use Series Guam Housing and Urban Renewal Authority
OPA Report No. 24-01	Guam Memorial Hospital Authority Revenue Cycle Management
OPA Report No. 23-11	Government-Wide Credit/Debit Card Use Series, Guam Visitors Bureau
OPA Report No. 23-10	Government-Wide Credit/Debit Card Use Series, Guam Power Authority and Guam Waterworks Authority
OPA Report No 23-08	Chamorro Land Trust Commission Oversight of the Removal of Coral Material from the Guam International Raceway Park
OPA Report No 23-07	Flash Report on GDOE Education Stabilization Fund Expenditures
OPA Report No 23-06	Audit on GEDA Procurement of Consultant Services for New Hospital Development
OPA Report No 23-06	The Government of Guam COVID-19 Quarantine and Isolation Facilities Utilization Analysis
OPA Report No 23-04	Audit on GDOE Overtime
OPA Report No. 23-03	Department of Revenue and Taxation Business Privilege Tax on Military Construction Contracts
OPA Report No. 23-02	Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products
OPA Report No. 22-06	Coronavirus Relief Fund Expenditures
OPA Report No. 22-05	Port Authority of Guam, Back Wages
OPA Report No. 22-02	General Services Agency Procurement of Consultation Services for GBHWC-Criminal Justice Program

OPA Report No. 22-01	Autonomous Agency Collections Fund
OPA Report No. 21-09	Port Authority of Guam, Back Wages
OPA Report No. 21-06	Government of Guam Procurement of Hotels Used for COVID-19 Quarantine Audit
OPA Report No. 21-04	Status of the Government of Guam Coronavirus Relief Fund Expenditures as of December 31, 2020
OPA Report No. 21-03	Port Authority of Guam Back Wages
OPA Report No. 21-02	Status of the Government of Guam Coronavirus Relief Fund Expenditures
OPA Report No. 21-01	Government of Guam COVID-19 Payroll Expenses
OPA Report No. 20-08	Government of Guam Coronavirus Relief Fund Expenditures Part I
OPA Report No. 20-07	75th Guam Island Fair and Liberation Day Carnival Procurement



Government of Guam Instrumentalities Under Investigation by Office of the Attorney General

1. Chamorro Land Trust Commission
2. Department of Administration
3. Department of Labor
4. Department of Public Works
5. Department of Revenue and Taxation
6. Government of Guam Retirement Fund
7. Guam Community College
8. Guam Consolidated Commission on Utilities
9. Guam Department of Education
10. Guam Department of Public Health & Social Services
11. Guam Fire Department
12. Guam Homeland Security/Office of Civil Defense
13. Guam Memorial Hospital Authority
14. Guam Power Authority
15. Guam Public Utilities Commission
16. Guam Regional Transit Authority
17. Guam Visitors Bureau
18. Guam Waterworks Authority
19. Office of the Governor of Guam
20. Port Authority of Guam
21. University of Guam / Research Corporation of the University of Guam

(list subject to update)