

On Mon, Sep 11, 2023 at 6:11 PM Heather Zona <hzona@oagguam.org> wrote:
Hi Doug,

Sorry, I am just getting to this now. I do not see anything in my email about concerns directed at Yolie or even mentioning her. The concerns I raised should be a concern of management generally and really have nothing to do with your chief of staff, except as to the extent she is taking actions that are contrary to the law or that impair our ability to carry out our work, but I would hope that would trouble you as well. Some of these things, like forcing investigators to clock in, were implemented long before Yolie came on board. I did not see that your email addresses any of the concerns I raised but they're still outstanding. I wasn't aware of a deputies' meeting but have always been willing to meet and discuss these topics. I realize morning meetings are easier for you so you can work at your private office in Hagatna in the afternoons; unfortunately, mornings are really busy for prosecution and family especially given our limited staff but I have tried to make it happen.

People tend to respect those with experience and ability. Perhaps the perceived lack of respect is a reflection of the foregoing. I don't see Frank's email as disrespectful, either. Rather, I see the COS's failure to provide me with a copy of a memo affecting my staff problematic because I had no idea what was going on until a staff member brought it to my attention. Perhaps it was an oversight, but an experienced COS typically would advise management of something like this first to be able to respond to any questions that come up. I wasn't aware she had been directed to give me the memo personally. The memo could have simply been emailed to me. I am not sure why that was not the case.

There is an issue of concern which is that Yolie's daughter was hired as a Victim Advocate. You have restructured various departments since taking office. While the Victim Advocate Unit used to be under Consumer Protection, it is now under the administrative division, of which Yolie is a part. Yolie was the one who enforced the "no jeans" policy on the Victim Advocates: shortly thereafter an advocate quit, and then Yolie's daughter was hired. I understand that Yolie's granddaughter also was working for OAG in administration as well. This would appear to be nepotism and in violation of Guam ethics rules. It also could be construed as Official Misconduct. I mentioned this to Frank Gumataotao who said he also was aware of the situation.

As to the budget hearing, I was in court. I apologize for not being there but I think doing our substantive trial work is quite important. While clearly that budget meeting was not OAG's finest hour, and senators typically have their own agendas, there were valid questions raised. The core of our visible work at OAG seems to be in prosecution and the senator questioned whether your management policies are driving the organization "into the ditch" because so many attorneys have left and are leaving. This isn't our prosecution work itself that poses a problem, which work I think most people are quite happy with. It is your management style that is the issue. The concern raised was that we will not be able to prosecute our cases if your management style causes more people to leave, and keeps people from coming to our office. Sadly, this has come to pass.

You consistently disrupt prosecution operations, rearranging staff and organization without consulting anyone, including me as the division head, and creating both chaos and inefficiency. While we expect to work collaboratively with the Attorney General, your actions are improper and disruptive and make it very difficult to even work in the office and perform our tasks. Some examples:

1. You have had Joe Guthrie insist we charge a case where you were representing the victim. This is unethical.
2. You have had Joe Guthrie insist that cases on which you previously were defense counsel receive some priority in prosecution over others. I have explained to Joe that this is inappropriate and unethical.
3. You have demanded we have a "rule" that the prosecutor who tried a case appear for the sentencing hearing. Grant and I both explained to you that this is our general practice; however, we cannot have such a rule because people do various things and when someone is in trial or on vacation or has left the office, the trial attorney cannot be expected to return. You said that it would be a rule if you ordered it to be. Your insistence only highlights your lack of knowledge as to prosecution practices and management generally.
4. You have walked into Renaida's office and demanded she file a motion to revoke pretrial release "right now" without regard as to Renaida's workload, immediate projects or deadlines, such as magistrate complaints to charge out our cases which must be filed within 48 hours. No effort was made to ask me about this or coordinate. Your assignment was not an emergency and actually disrupted our operations.
5. On one case you insisted a prosecutor interview witnesses "in the morning" rather than in the afternoon when they were scheduled without any regard for the schedules of the prosecutor or witness. There is no reason for you to get involved in the time scheduled for witness interviews and your insistence on a particular schedule was bizarre and inappropriate.
6. You have limited which prosecutors can take cases to trial. We do not have enough prosecutors. You are impeding our ability to prosecute our cases. You only want "winning" trial attorneys; while such a result is desirable it reflects a fundamental lack of understanding as to how prosecution and trials generally work. We all have trial experience in prosecution. Some of us have done many trials, and know that sometimes cases are lost. This is often a training mechanism. But anyway, we cannot limit our trial attorneys to four people given our caseload.
7. You have reassigned random people to prosecution without advising me these people would be working in the division; people show up and I have no idea who they are or what they are supposed to do. Recently I learned William Pole had been tasked to do something; the way I learned was from support staff who were asked to perform an inordinate amount of extra work as a result of this project, and who expressed concern that responding to the request was disrupting their ability to perform their normal prosecution duties. There was no meeting, no effort to contact me to work on this project or balance staffing

assignments. Moreover, given our staffing shortages, this project is not a high priority. We need more people to help support our ongoing case prosecution. I expressed my concern, not only at diverting staff time to this pet project, but also that we do not have sufficient attorneys to cover the hearings. You claimed Pole would handle the hearings, Pole told me specifically he would not. Again, proper planning requires the issues be discussed.

8. You have reassigned the Victim Notification Unit to be supervised by the Paralegal Supervisor when they do no work for paralegals; they perform work for the attorneys. There was no consultation with me about this and it seems to serve no particular purpose except to make it impossible for Zina to evaluate people who do no work for her, and saddle her with more work. I believe this came about after you were upset that someone who was *not* named as a victim in a police report was not notified about a case.

9. You have reassigned the Process Servers Unit to be supervised by your Chief of Staff, who has no experience with what that unit does or even in managing people apparently. This group used to be supervised by the Investigators; you have hired someone who is a likely witness/participant in multiple criminal cases, including a murder case, as a process server. This is something that would not have been tolerated had PSU continued to be supervised by Investigators. They would have recognized the individual's name from police reports. In fact, I understand they did recognize this individual and brought the information to the attention of the administration; however, nothing was done. In prosecution, we are concerned that this will jeopardize our murder case.

10. You have sent memoranda detailing which person would be responsible for uploading documents to the website, again, without regard for staff duties.

11. You have reassigned two law enforcement investigators to devote significant amounts of time to prepare spreadsheets for your deportation project; such a project could be completed by your administrative staff rather than diverting law enforcement investigators away from investigative work so we can prosecute our cases. You have reassigned three other experienced investigators to CSED where they simply track down non appearing parents; prosecution is without those investigators' work at a time when we are severely limited in staffing and could use their help in prosecuting our cases.

12. You transferred a legal secretary from prosecution to answer CSED phones after two other secretaries already had left prosecution and were not replaced. I was not consulted about this and did not know about it until after the fact. I asked who would take over the reassigned secretary's tasks and was told another individual who already was in our unit would do so.

13. Most recently you have reassigned our secretarial supervisor to CSED allegedly because of a failure to provide notification of calendared events. We generally do not have an issue in General Crimes; this seems to have come about because Gloria Rudolph did not get notice of a hearing on one of her two Government Corruption cases. General Crimes is a separate division from the Government Corruption Unit. A better solution would be to give GCD its own support staff to track calendar and prepare documents for trial. I am not sure

why you have now decided to transfer Vivian to CSED as this will only create a larger gap in our operations as Vivian does quite a bit, aside from limiting us to only two secretaries now. Again, I had no idea of this plan and was not consulted. I have repeatedly requested secretaries be hired to assist prosecution due to the enormous workload we have not only in simply preparing magistrate materials and indictments, but also in preparing our cases for trial. Now you are taking away our most experienced legal secretary who also has the most institutional knowledge in the department. You have reassigned all her duties to the Paralegal Supervisor. This is not an appropriate result as the Paralegal Supervisor already is overwhelmed by her own work. Paralegals and secretaries perform different tasks.

Your meddling and interference have disrupted our operations and distracted staff from the essential duties of prosecution. It has destroyed what little morale is left in the office. People routinely say to each other in prosecution, "thank you for coming to work today, please come back tomorrow". While this started as sort of a joke, it is nonetheless the reality that people are leaving because of your management style.

You have demanded you approve all plea offers for first degree felony and other cases, and then insist we ask for the maximum sentence. This is not the purpose of a plea offer. A plea offer is what we expect we can get after trial. I have never seen a judge on Guam impose the maximum sentence, even after trial. You are not being tough on crime when you take this approach. Rather, you are making it so that the defendant will absolutely want to go to trial. This is a troubling approach at a time when we do not have enough prosecutors to take cases to trial. Experienced trial attorneys are aware that trials always pose a risk, no matter how strong you believe your case to be.

Similarly, you insist that we ask for the maximum sentence in every case for sentencing. While this may be appropriate in some cases, it is not appropriate in every case or even in most cases. Judges are looking for our input as to sentences. If the appropriate sentence is 10 years, for example, but we are asking for thirty-five years, this is not helpful to the judge and makes us look unreasonable and ridiculous. Again, this does not make us look tough on crime, it makes us look out of touch with the case we are prosecuting.

Also problematic is your insistence that prosecutors take legal positions that are contrary to the law. Judges also have pointed this out to us repeatedly. By insisting on such arguments, you are placing our law licenses in jeopardy because we are taking positions we know are not supported in the law. I have raised this concern to you. When I have provided legal authority to explain why the positions you are taking are legally incorrect, you refuse to acknowledge or even familiarize yourself with the legal authority. In one such instance, you screamed at me, "I am the fucking AG!" and that you have "twenty-nine fucking years of being a fucking defense attorney!" before accusing me of being condescending and not supporting your administration's policies. I understand these tantrums also are directed at others besides me but they are nonetheless inappropriate and unprofessional. As an attorney at the agency responsible for enforcing

the law, I think it is very important to take positions consistent with the law; this is my obligation as well as yours. In that particular incident, I was trying to explain that once a case is dismissed, a judge must release a defendant from jail; you argued with me and insisted there would be a later release hearing. This is simply incorrect as a defendant cannot be held in jail if there is no pending case.

You have insisted that we object to severance motions in case situations where the United States Supreme Court has mandated severance. Not only has this made us look incompetent, it has irritated judges, who have to issue opinions stating the obvious and in the event some judge does not do so, it opens the case up to automatic reversal on appeal. I have explained this to you but you nonetheless have insisted we take this ill-advised legal approach. Similarly, you have insisted on having two different pleas, one for citizens and one for non-citizens. This constitutes national origin discrimination and we have not implemented this policy as a result. Again, the United States Supreme Court has made clear national origin may not be considered in the administration of justice, including at sentencing. We run the risk not only of having our pleas overturned on appeal, but exposing our attorneys to civil rights lawsuits, and to having our office lose federal funding. I have made these concerns clear to you on various occasions and have provided the legal authority for the positions, but you insisted this was a campaign promise.

In another incident, you insisted on meeting with a CSC victim prior to a plea being accepted. You had not worked on the case in any capacity, and your decision to meet with the victim was opposed by me and the prosecutor on the case. You insisted the victim come to your office, rather than the Victim Services Center which is the normal procedure, attempted to question her about the case even though you were instructed not to do so, and then gave her gifts from your Love Your Kids program including an OAG notebook, I believe. Your interference is absolutely inappropriate and goes against not only well-established protocol of prosecution, but also of handling CSC cases and addressing victims generally. Your actions do not suggest you have had any training in interviewing CSC victims, which prosecutors and defense attorneys who have handled such cases have had precisely because of these concerns. We cannot have our cases compromised by having anyone say we affected a victim's testimony by tainting the victim's memory through additional questioning or by providing the victim with gifts.

You apparently have met with other victims without an investigator present, and without prosecution's knowledge, which means we are unable to provide that information to the defense which we are obligated by law to do.

Other management decisions are of great concern. Here are a few examples:

1. You have implemented a policy that no one may take vacations. While you claim this is to ensure no one burns out, people are in fact burning out because they are not permitted any time off. As previously noted, I do not believe it is legal to refuse to allow employees to take leave. But anyway, department heads,

not the Chief of Staff, are in the best position to know whether a division is sufficiently staffed.

2. Your administration has harassed and refused to pay employees who took medical leave even though they had valid doctors' notes, insisting the employees provide you with their diagnosis, prognosis, and course of treatment. This is protected confidential information and is not permitted under the DOA rules. Again, I have pointed this out to you. Aside from alienating good employees and the few who have chosen to stay under your administration, I am concerned such actions could be construed as official misconduct.

3. You insist investigators and others work on weekends but refuse to pay overtime; this has been raised by employees as an issue because they already work forty or even more hours per week working on our cases. Your response was to try and figure out who leaked this information to the Legislature and to send the response to my original email.

4. The Post was looking for "filler photos" for its publication. You insisted the press be permitted to parade through prosecution and other divisions to show how hard we work even though we in prosecution did not want this to happen due to our ongoing work and investigations. I shared my concerns that we have confidential matters, including ongoing investigations, and decisions as to charging, sentencing, trials, and trial strategy; allowing the press into our inner workings is inappropriate. You stated that because taxpayer money funds our office, somehow this means the press is entitled to see our inner workings. This is not true. Taxpayers pay for many things but they do not get to wander around the FBI or DRT offices or the GPD investigations unit, for example. The same is true here and we should not have our confidential operations and work product compromised for a photo op. No one in prosecution wants to have the press here to disrupt or compromise our work. I suggested that the press simply take photos of us in the courtroom; you insisted they come into our office. Ultimately, they did not take photos while in prosecution but were allowed to come through our office. This is too great a risk of our confidential matters simply for "filler photos".

5. You demanded that you address the Grand Jury to thank them for their service. The Grand Jury is supposed to be secret, and is not supposed to be greeted by anyone. I have expressed my concern that your decision to contact the Grand Jury is inappropriate and threatens the viability of our cases, in addition to appearing like you are campaigning since you are not presenting any cases to the Grand Jury. You have insisted that there is nothing wrong and demanded I provide you with caselaw. Though I offered to research the issue for you, I am not going to devote time to this silliness as I will be leaving the office anyway. I can only hope you do not torpedo our cases with your insistence on talking to the Grand Jury, which is the province of the Presiding Judge.

Other decisions you have taken, such as the decision to dismiss the Tiny Homes civil case, are problematic. The civil suit was the only hope that the victims might recover something from the defendant. The civil case would have permitted discovery as to the assets, and could have resulted in a judgment and there would have been years to

execute on it. The criminal case has a higher burden of proof, lacks the broad discovery opportunities of a civil case, and will not result in any money to the victims. I expressed all these concerns on multiple occasions, to no avail.

I (and others) have endured what everyone acknowledges is a highly dysfunctional, chaotic, and generally toxic work environment mostly because I do not want to burden the already overburdened remaining professionals. I have tried to keep morale up in prosecution even though people are very burned out with work. We all are doing this work because we take our work seriously and are concerned about the safety of the community -- we continue to work under the difficult circumstances you have created even though we are lacking personnel, experienced or not, and have an overwhelming workload.

I also have continued to work on civil cases because there is no one in the civil division to do so. The CERCLA and Receivership cases related to the Ordot Dump are extremely important cases for Guam. Agencies have called me to provide them with advice because they cannot reach anyone in civil. I had a 9th Circuit case that ended up getting dismissed because there was no one to handle it. These are all very problematic situations in our office.

At this point, however, I am resigning from the Office of the Attorney General altogether. I have not come to this decision lightly but I cannot continue to work so hard in the very toxic environment you have created. Though repeatedly you claim prosecution has a top priority of your administration, your actions indicate that is not the case. I am proud of the work that prosecution has done but your management style undermines our achievements.

My last day in the office will be September 29, 2023 so that I can wrap up things; however, I will take the week of October 2 as annual leave.

Heather Martinez Zona

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