



Jerrick Hernandez <jhernandez@guamopa.com>

Procurement Appeal In the Matter of Guam Pacific Enterprises, Inc., Docket No. OPA-PA-21-011

Cynthia Guerrero <cguerrero@triton.uog.edu>

Wed, Jan 12, 2022 at 3:48 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, GPE INC <guampacific@gmail.com>

Cc: "Camacho, Anthony" <arcamacho@triton.uog.edu>

Hafa Adai:

Kindly find attached a copy of the University of Guam's Brief Re Appellant's Appearance *In Propria Personum*. Please acknowledge receipt. Thank you.

--

Si Yu'os ma'âse',

**Cynthia T. Guerrero, MPA****Office of the Legal Counsel**

Office: +1 (671) 735-2992

cguerrero@triton.uog.edu

<https://www.uog.edu/administration/office-of-the-president/legal-counsel>

The University of Guam is an equal opportunity provider and employer.

CONFIDENTIALITY STATEMENT: This message is from the University of Guam and contains information which is privileged and confidential and is solely for the use of the intended recipient. If you are not the intended recipient, any review, disclosure, copying, distribution, or use of the contents of this message is strictly prohibited. If you have received this transmission in error, please destroy immediately.

This email message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential information covered under the Family Educational Rights & Privacy Act (FERPA). If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message (including any attachments) is strictly prohibited. If you have received this message in error, please destroy all copies of the original message (including attachments) and notify me immediately by email or phone. Thank you.

**UOG's Brief Re Appellant's Appearance In Propria Personum.pdf**

552K

ANTHONY R. CAMACHO, ESQ.
UNIVERSITY OF GUAM
UOG Station
Mangilao, Guam 96923

Appearing as Counsel for University of Guam

PROCUREMENT APPEAL

IN THE MATTER OF)	DOCKET NO. OPA-PA-21-011
)	
GUAM PACIFIC ENTERPRISES, INC.,)	UNIVERSITY OF GUAM'S
)	BRIEF RE APPELLANT'S
Appellant.)	APPEARANCE <i>IN PROPRIA</i>
_____)	<i>PERSONUM</i>

COMES NOW, Purchasing Agency UNIVERSITY OF GUAM (the “University”), through its General Counsel, ANTHONY R. CAMACHO, ESQ., who hereby submits, pursuant to the Hearing Officer’s Order dated January 5, 2022, UOG’s Brief re the Appellant’s appearance in this matter *In Propria Personum* (In one’s own proper person without an attorney) which is as follows:

I. The Appellant’s Appearance in this matter *In Propria Personum* is the Unauthorized Practice of Law

GUAM PACIFIC ENTERPRISES, INC. (GPE) appearance in this proceeding by and through its President, Sedfrey Linsangan, who is not a licensed attorney on Guam, constitutes the unauthorized practice of law. Generally, it is unlawful for any person to practice law on Guam unless that person is an attorney admitted to practice in Guam. 7 G.C.A. §9A106 and §9A215(d). Further, any person who violates 7 G.C.A. §9A106 by

engaging in the unauthorized practice of law is guilty of contempt of the Superior Court and upon conviction is punishable as provided by law. 7 G.C.A. §9A106. The practice of law on Guam includes representing any other person or advising any other person as to any lawsuit or action before any court, board, agency, or **administrative tribunal**, except as allowed by 7 G.C.A. §9A215 or the rules and regulations authorized to be promulgated by that statute (Bold Emphasis Added). 7 G.C.A. §9A215(b)(3). Here, there is no question that GPE's President, who is not licensed to practice law on Guam has signed and filed GPE's pleading in this matter on behalf of GPE and purports to represent GPE in this procurement appeal before the OPA. Thus, GPE's President has committed the unauthorized practice of law by representing GPE in this administrative matter before the OPA in violation of 7 G.C.A. §9A106 and §9A215(d).

There are no statutory exceptions that apply to GPE's President representing GPE in this matter that would exempt GPE's President from committing the unauthorized practice of law. The closest is the statute that states that the illegal practice of law does not include a bona fide full-time employee, officer or director of a corporation representing such corporation before a board, agency, or in small claims court. 7 G.C.A. §9A106(c)(13). Here, the OPA is an instrumentality of the government of Guam, independent of the executive, legislative and judicial branches. 1 G.C.A. §1900. Albeit the term "agency" as used in 7 G.C.A. §9A106(c)(13) is not defined, the courts of Guam have interpreted the legislative inclusion of certain entities to the omission of others in any statute as a indication of a legislative intent to omit or not include all other similarly situated entities. *Guam Radio Services Inc., v. Guam Economic Development Authority*, 2000 Guam 1, ¶19. Applying that

rule of statutory interpretation to this matter, the omission of instrumentalities to the exception set forth in 7 G.C.A. §9A106(c)(13) indicates a legislative intent to omit or not include instrumentalities of the Government of Guam such as the OPA to this exception to the unauthorized practice of law. Specifically, Chapters 9 and 9A of 7 G.C.A., include the term “instrumentality”. For example, the Government of Guam, agencies, and **instrumentalities** are exempt from paying filing fees in the Superior Court of Guam to fund the Guam Law Libraries operations (Bold Emphasis Added). 7 G.C.A. §9211(f). Further, government attorneys who are members of the bar of the highest court of any state or territory of the United States or of the District of Columbia, while representing the United States of America, the government of Guam, or any agency, **instrumentality**, officer, or employee thereof, in the course of his or her official duties, may practice before the courts of Guam without being admitted to practice for a period of two (2) years (Bold Emphasis Added). 7 G.C.A. §9A114A. Hence, the legislature intended that instrumentalities as well as agencies be included in 7 G.C.A. §9211(f) and 7 G.C.A. §9A114A, and the legislature’s inclusion of agencies and its omission of instrumentalities from the exception set forth in 7 G.C.A. §9A106(c)(13), indicates a clear legislative intent for that exception to apply to agencies and not instrumentalities such as the OPA. Therefore, the exception set forth in 7 G.C.A. §9A106(c)(13) does not apply because the OPA is an instrumentality of the government of Guam and not a board, agency, or the Small Claims Court.

II. THE OPA MUST DISMISS GPE'S APPEAL IN THIS MATTER

As a result of GPE's President's representation of GPE in this matter being an unauthorized practice of law, and due to all the pleadings in this matter, to include the Notice of Appeal filed by GPE being made by GPE's President and not a licensed attorney, this matter is not properly before the OPA. Generally, the Public Auditor's jurisdiction is limited to matters properly submitted to him. 5 G.C.A. §5703. Albeit in UOG's prior pleadings, UOG had argued that the OPA should alternatively order GPE to appear through licensed legal counsel or dismiss this matter, after reviewing the Magistrate Judge's recommendation in *Washington D.C., Seattle City Manufacturing Inc. v. Department of Public Health and Social Services*, CV00034, WL 6532817 (U.S.D.C. of Guam, REPORT & RECOMMENDATION to Deny Application to Proceed Without Prepaying Fees or Costs (ECF No. 2) and to Dismiss Complaint, November 5, 2020), the proper remedy is the dismissal of this matter. In the U.S. District Court of Guam, as well as other federal courts, a corporate plaintiff, may only appear through a licensed attorney. *Id.*, citing *In re Am. W. Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."). In *Washington*, a corporate plaintiff appeared through a representative who was not a licensed attorney and the magistrate's judge in *Washington* ruled that such representative may not bring a lawsuit on behalf of a corporation and recommended that the complaint be dismissed because amendment of it would be futile. *Id.* Here, like the federal courts, the practice of law includes representing a party before an administrative tribunal and only licensed attorneys may do so. Further, here, like the corporate plaintiff in *Washington*, GPE has filed its notice

of appeal through a representative who is not a licensed attorney. Hence, because the facts of this matter are similar to the facts in *Washington*, the OPA should apply the rule in *Washington* and dismiss this matter because it is not properly before the OPA due to the Notice of Appeal for GPE being filed by a GPE representative who is not a licensed attorney.

III. GPE's ARGUMENTS LACK MERIT

In its brief on *Pro Se* Representation, GPE makes three (3) arguments to be allowed to continue to appear in this matter without being represented by a licensed attorney and both of these arguments have no merit. First, GPE argues that because 1 G.C.A. §1900 created the OPA as an instrumentality of the government of Guam, independent of the executive, legislative and judicial branches, it can allow GPE to appear without being represented by a licensed attorney. However, this argument is incomplete and not on point. The real issue here is whether a corporation may appear before an administrative tribunal that is an instrumentality being represented by a person who is not licensed attorney. As shown above, such act constitutes the unauthorized practice of law which is impermissible. 7 G.C.A. §9A106 and §9A215(d). Second, GPE argues that its prior appearances in procurement appeals before the OPA being represented by a person who was not a licensed attorney excuses it from the requirement to be represented by a licensed attorney in this matter. However, that argument is not supported by law and would also constitute the unauthorized practice of law which is impermissible. Finally, GPE argues that the OPA should simply allow it to appear through its President so that it can avoid incurring attorney fees and that requiring it to be represented by licensed legal would have a chilling effect on

the filing of procurement appeals due to these legal fees. It should be noted that not all businesses are corporation and that nothing stated above would prevent, for example, the owner of a sole proprietorship from appearing *Pro Se* in a procurement appeal. GPE had a choice in its business form and it choose to be a corporation, and, based on information and belief, likely did so to enjoy the benefits of the corporate form of business structure. However, here, it is seeking to avoid the consequences of its choice of business form by trying to appear in this matter through a representative who is not a licensed attorney. When an entity chooses to incorporate and get the resulting benefits, it cannot when convenient, ask the court to ignore its corporate status and extend to it the advantages to which an individual person is commonly entitled. *Kyle v Beco Corp.*, 707 P2d 378, 383 (Idaho, 1985). The court in *Kyle*, applying the aforementioned reasoning, imposed the general rule on a non-attorney shareholder of a corporation representing the corporation before a state industrial commission that representation of another person before a public agency or service commission constitutes unauthorized practice of law, where proceedings before those tribunals are held for purposes of adjudicating legal rights or duties of party. *Id.*, at 382. The OPA should adopt the reasoning in *Kyle* and deny GPE's request to appear through its President in this matter simply because it is more convenient for GPE because it will be avoiding attorney fees.

CONCLUSION

Based on the forgoing, the OPA should find that GPE's representation by its President in this matter constitutes the unauthorized practice of law and its must dismiss this matter because it is not properly before the OPA.

SUBMITTED this 12th day of January, 2022 by:



ANTHONY R. CAMACHO, ESQ.
Attorney for the University of Guam