



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-25-002 & OPA-PA-25-006: In the Appeal of Glimpses of Guam, Inc.

Christine Jackson <chrissy@mcdonald.law>

Thu, May 1, 2025 at 3:25 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "djberman@pacificlawyers.law" <djberman@pacificlawyers.law>, Charles McDonald <charles@mcdonald.law>, Jenny Reynoso <jenny@mcdonald.law>, McDonald Law Office <guam@mcdonald.law>

Hafa Adai Mr. Hernandez,

Please see the attached ***Purchasing Agency's Opposition to Appellant's Motion to Disqualify the McDonald Law Office and Charles McDonald as Counsel*** for filing in the above-reference matter.

Kindly confirm receipt of this email and its attachments.

Sincerely,

Christine (Chrissy) Jackson

Legal Assistant I McDonald Law Office, LLC

173 Aspinall Avenue, Suite 207A

Hagåtña, Guam 96910

Telephone: (671) 588-8866

Email: chrissy@mcdonald.law

This message and any attachments are intended only for the use of the addressee and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by email at chrissy@mcdonald.law or by telephone at (671) 588-8866 and delete the message and any attachments from your system.



OPA-PA-25-002, OPA-PA-25-006 - GVB's Opposition to Motion to Disqualify.pdf

541K

1 **McDONALD LAW OFFICE, LLC**

2 173 Aspinall Avenue, Suite 207A

3 Hagatna, Guam 96910

4 Telephone: (671) 588-8866

5 Facsimile: 671-472-9616

6 Email: guam@mcdonald.law

7 Attorneys for Purchasing Agency

8 *Guam Visitors Bureau*

9 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

10 IN THE APPEAL OF

11 GLIMPSES OF GUAM, INC.,

12 Appellant.

Appeal No. OPA-PA-25-002

Appeal No. OPA-PA-25-006

**PURCHASING AGENCY’S OPPOSITION
TO APPELLANT’S MOTION TO
DISQUALIFY THE McDONALD LAW
OFFICE AND CHARLES McDONALD AS
COUNSEL**

13 COMES NOW, Appellee, Guam Visitors Bureau (“GVB”), by and through its legal counsel,
14 Joseph B McDonald of McDonald Law Office and opposes Appellant Glimpses of Guam, Inc.’s
15 (“Glimpses”) Motion to Disqualify the McDonald Law Office and Charles McDonald as Counsel
16 for the Guam Visitors Bureau filed April 29, 2025 and further states as follows:

17 **I. February 4, 2025 protest and instant appeal**

18 GVB issued RFP 2025-002 for Integrated Communications, Advertising and Event
19 Support Services (the “ICAESS RFP”) on December 27, 2024. Bid submissions for the ICAESS
20 RFP closed on January 17, 2025. A selection panel recommended award of the ICAESS RFP to
21 Ruder Integrated Marketing Strategies (“RIMS”) on January 21, 2025, after evaluation of a
22 submission entitled Navigating Forward Together, a collaboration under the Manhita Team
23 comprised of RIMS and other companies. Procurement Record, GVB0697-0786. On
24 February 4, 2025, Daniel J Berman of the Berman Law Firm submitted a protest of the decision
25 on protest of method, solicitation or award on Glimpses’ behalf. On February 18, 2025, GVB
26
27
28

1 notified Glimpses and attorney Berman of its determination that award of the contract for the
2 ICAESS RFP to RIMS was necessary to protect a substantial interest of Guam. *Id.*, GVB0366-
3 0371. GVB's substantial interest determination regarding the ICAESS award contained the
4 designated Deputy Attorney General's concurrence. *Id.* at GVB0371. On March 11, 2025,
5 Glimpses appealed the instant matter with the Office of Public Accountability ("OPA").
6

7 **II. April 2, 2025 protest; Glimpses' second appeal**

8 On March 24, 2025, GVB issued its decision denying Glimpses' February 4, 2025
9 protest. On April 2, 2025, Glimpses submitted a second protest concerning the ICAESS RFP,
10 followed by a procurement appeal on April 17, 2025. OPA-PA-2025-006. As of the date of this
11 opposition, GVB has yet to issue a decision on Glimpses' second protest.
12

13 **III. Glimpses' motion to disqualify GVB counsel**

14 At the status hearing held April 24, 2025 in the instant appeal (i.e. this first of Glimpses'
15 two appeals), Glimpses Counsel raised the issue of disqualification of the McDonald firm and
16 was allowed time to submit a written motion, which it filed on April 29, 2025.
17

18 **IV. The Public Auditor is providing Glimpses due process with a fair and** 19 **impartial hearing.**

20 Every person is entitled to an impartial administrative hearing. *Sule v. Guam Bd. of*
21 *Dental Examiners*, 2008 Guam 20 ¶ 20 (citations omitted). To guarantee fairness in procurement
22 appeals, the Public Auditor may recuse himself at any time, or any party may raise the issue of
23 the Public Auditor's disqualification and state the relevant facts prior to the hearing. 2 GARR
24 Div. 4 § 12116. In the event of disqualification, the Public Auditor *shall* designate a member of
25 his or her staff or appoint a hearing officer to preside over the matter. *Id.* (emphasis added). The
26
27
28

Hearing Officer may be an assistant attorney general or an attorney in private practice. *Id.*; see also 1 GCA § 1909 (d).

To disqualify the Public Auditor, the standard is actual bias. *See Sule* ¶¶ 19 – 20. An appearance of impropriety is not grounds for disqualification as adjudicators are presumed to be free from bias, and mere allegations of impartiality are insufficient. *Id.* ¶ 19. There must be a concrete factual demonstration supporting the allegation. *Id.* ¶ 20 (citations omitted). Indeed, a party's unilateral perceptions of an appearance of bias cannot be a ground for disqualification. *Id.* (citations and quotations omitted). The standard was adopted in Guam because it is impractical to apply an appearance of impropriety standard in a small local area. *Id.* ¶ 19.

As Glimpses did not provide facts showing actual bias, the OPA may afford due process to Glimpses by continuing to determine the instant appeal, appointing a Hearing Officer, or referring the matter to the Superior Court. 2 GARR Div. 4 § 12116.

V. Glimpses lacks standing to seek disqualification of the McDonald firm.

Standing is a threshold jurisdictional issue. *Benavente v. Taitano*, 2006 Guam 15 ¶ 14. The relevant inquiry is whether the litigant is entitled to have its issue decided on its merits. *Id.* Glimpses lacks standing because the McDonald firm does not currently, nor has it ever, represented Glimpses; and Glimpses has not shown that it has a concrete interest at stake beyond the fair administration of this procurement appeal.

Disqualification of counsel is a drastic course of action that does not rest on hypersensitivity to ethical nuances or appearance of impropriety. *Barrett-Anderson v. Camacho*, 2018 Guam 20 ¶ 14. The moving party must prove facts that establish a factual prerequisite for disqualification. *Bottoms v. Stapleton*, 706 N.W.2d 411, 418 (Iowa 2015). Generally, before

1 seeking disqualification, the complaining party must have or had an attorney-client relationship
2 with that attorney. *See, e.g. Great Lakes Constr., Inc. v. Burman*, 114 Cal.Rptr.3d 301, 307
3 (Cal.App. 2010); *Kasza v. Browner*, 133 F.3d 1159, 1171 (9th Cir. 1998).

4
5 Otherwise, the moving party must show an ethical breach that infects the moving party's
6 own interest in a just and lawful determination of the claims. *Coyier v. Smith*, 50 F.Supp.2d 966,
7 971 (C.D. Cal. 1999). More specifically, absent an attorney-client relationship, the moving party
8 must have had an expectation of confidentiality with the attorney, regardless of whether a
9 lawyer-client relationship existed. *Great Lakes*, 114 Cal.Rptr.3d 507-308 (citations omitted).
10 The non-client movant must show harm arising from a legally cognizable interest which is
11 concrete and particularized, not hypothetical. *Id* at 309; *Coyier*, 50 F.Supp.2d at 971-73. As a
12 non-client, the movant must establish particular facts showing a stake beyond the general interest
13 in the fair administration of justice." *S.E.C. v. King Chuen Tang*, 831 F.Supp.2d 1130, 1143
14 (N.D. Cal. 2011).

15
16 Glimpses is not a current or former client of the McDonald firm. For Glimpses to have
17 standing to seek disqualification, then, it must establish particular facts showing that it has a
18 stake beyond the general interest in the fair administration of justice. No such argument or facts
19 are found in its motion. Glimpses only alludes to some hypothetical confidential information,
20 however, between GVB and the OPA, and not confidential information the McDonald firm or its
21 attorneys obtained from Glimpses. Glimpses has not shown it has an expectation of
22 confidentiality arising from an attorney-client relationship with the McDonald firm or its
23 attorneys. Its motion for disqualification must be denied.
24
25
26
27
28

**VI. The Public Auditor may appoint another hearing officer if recusal is
determined, or he may refer the matter to the Superior Court.**

The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of the Procurement Law. 5 GCA § 5703. The integrity of the procurement system encompasses fair and equitable treatment of all parties involved in public procurement, fostering competition and ensuring accountability, fiscal responsibility, and efficiency. *CARL Corp. v. State Dept. of Educ.*, 946 P.2d 1, 26 (Haw. 1997) citing *Planning Design Solutions v. City of Sta. Fe*, 885 P.2d 628, 631 (N.M. 1994).

The foundations of the procurement system's integrity rest on valid meritorious claims. Given pervasive and fatal limitations on Glimpses' appeal; namely (i) lack of jurisdiction over a § 5425 (c) decision because none was provided before the instant appeal, (ii) lack of jurisdiction over a substantial interest determination because appellant did not seek confirmation of the determination, (iii) inclusion of grounds not protested to the agency but brought to appeal, and (iv) inclusion of grounds brought more than 14 days of being charged with knowledge as an aggrieved party, Glimpses desperate resort to disqualification of counsel is understandable but does not hide what is in plain sight—that the instant appeal was too early and it has no standing to seek disqualification. The OPA must only decide valid meritorious claims.

Should the Public Auditor determine, nevertheless, to proceed with recusal, appointment of Mitchell Thompson as Hearing Officer appears appropriate. Otherwise, if no member of the Public Auditor's staff or the appointed Hearing Officer is able to preside over the matter due to disqualification, then such matter may be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480. 2 GARR Div. 4 § 12116.

VII. GVB Counsel is not a witness

Assuming the OPA has jurisdiction in the instant appeal (which of course is absent) Glimpses brandishes the professional rules for tactical advantage. Filing an appeal without exhaustion of remedies or merit, Glimpses grows increasingly desperate. Adjudicators must guard against canons of ethics being brandished to maneuver opposing counsel's withdrawal and to that degree unsettle the adversary. *Smaland Beach Ass'n, Inc. v. Genova*, 959 N.E.2d 955, 963 (Mass. 2012).

RESPECTFULLY SUBMITTED THIS 1st day of May, 2025.

McDONALD LAW OFFICE, LLC
Attorneys for Purchasing Agency
Guam Visitors Bureau

By:


CHARLES H. MCDONALD II