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FILE NO OPA-PA: 16-009

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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM

IN THE APPEAL OF)	OPA-PA-16-009
)	
PURESTONE, LLC)	
)	OPPOSITION TO A MOTION TO
)	DISQUALIFY THE PUBLIC
)	AUDITOR
APPELLANT)	
)	
)	

COMES NOW the Guam Economic Development Authority by and through attorney Thomas J. Fisher, and Opposes a Motion to Disqualify the Public Auditor.

***** Opposition *****

When a party seeks disqualification of the Public Auditor, it must show actual bias. This is a higher standard than that applied to judges and it is the law. In *Sule vs. Guam Board of Dental Examiners*, the Supreme Court stated,

The Ninth Circuit joined other federal circuits which have held that the “appearance of impropriety” standard set forth in 28 USC § 455, upon which Guam's substantive judicial disqualification statute is based, is inapplicable in administrative hearing settings. Echoing the rationale pronounced by the Second Circuit and Tenth Circuit, the court here stated

1 that because administrative adjudicators are generally affiliated with the
2 agency whose actions they review, it would be impractical to allow
3 disqualification on the appearance of impropriety standard of 28 U.S.C. §
4 455(a). The court further stated that: “Our holding finds further support
5 in the federal regulation concerning the recusal of an administrative law
6 judge. The regulation provides that an administrative law judge shall not
7 conduct a hearing if he or she is prejudiced or partial with respect to any
8 party or has any interest in the matter pending for decision. This
9 regulation mentions only actual prejudice; nothing in this regulation
10 mandates recusal for the mere appearance of impropriety. On this basis,
11 this court holds that actual bias must be shown to disqualify an
12 administrative law judge.” The Seventh Circuit has similarly stated:
13 “[W]e begin with the presumption that the hearing officer is unbiased.... It
14 is only after a petitioner has demonstrated that the decision maker
15 ‘displayed deep-seated and unequivocal antagonism that would render fair
16 judgment impossible’ that the presumption is rebutted....”. We agree that
17 the standard that should apply in determining whether the Board members
18 and hearing officer in this case had a disqualifying bias is the higher
19 standard of actual bias. In adopting this standard for administrative
20 adjudicators, we also espouse the rationale pronounced in the Bunnell
21 opinion-that it is impractical to apply an appearance of impropriety
22 standard to a proceeding in which members of the same profession in a
23 small local area are called upon to judge another member of their
24 profession. Hence, in order to prove that an adjudicator is biased, there
25 must be a concrete showing that bias actually exists. Indeed, a party's
unilateral perceptions of an appearance of bias cannot be a ground for
disqualification....” As one court has stated: “Every person is entitled to

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an impartial hearing in an administrative setting. A[n] [adjudicator] shall be disqualified where bias has been shown; however, the appearance of impropriety shall not constitute bias and shall not be grounds for disqualification. [Adjudicators] are presumed to be free from bias. Moreover, mere allegations of impartiality are insufficient to set aside an administrative determination. There must be a factual demonstration supporting the allegation and proof that the outcome flowed from it.”

Sule vs. Guam Board of Dental Examiners, 2008 Guam 20, pp.5-6 (Guam 2008), internal citations, quotations omitted. This is the law on Guam and the law applied by the Office of Public Accountability. *See In the Appeal of Teleguam Holdings, OPA-PA-10-002.*

In order for Purestone to prevail in its motion to recuse, it must show actual bias on the part of the Public Auditor and cannot rest on an allegation of impartiality. It is not enough that the Public Auditor be related to a witness; there must be a showing of actual, concrete bias. Because Purestone has failed to make this threshold showing, its Motion must be denied.

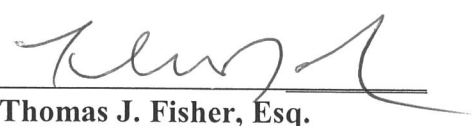
Finally, in the event the Public Auditor were to recuse herself, Purestone objects to the appointment of a hearing officer stating it was unaware that the Office had the ability to do so. A party’s lack of knowledge in a change in law or regulation does not amount to a deprivation of due process. In any event Purestone acknowledges that it received the process due when it states, “. . .the

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Public Auditor may have taken the appropriate steps under the Administrative
Adjudication law to amend §12601 . . .” *Motion to Recuse at p. 5.*

WHEREFORE Agency Guam Economic Development Authority Prays
Appellant’s Motion be denied.

FISHER & ASSOCIATES



Thomas J. Fisher, Esq.
For GEDA