

1 **KATHLEEN V. FISHER, ESQ.**
2 **WILLIAM N. HEBERT, ESQ.**
3 **MICHAEL A. PANGELINAN, ESQ.**
4 **SARAH L. FABIAN, ESQ.**
5 **CALVO FISHER & JACOB LLP**
6 Attorneys at Law
7 259 Martyr Street, Suite 100
8 Hagatna, Guam 96910
9 Telephone No.: (671) 646-9355
10 Facsimile No.: (671) 646-9403

11 Attorneys for Agency
12 A.B. Won Pat International Airport Authority, Guam

13 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
14 **PROCUREMENT APPEALS**

15 IN RE THE APPEAL OF DFS GUAM L.P.,

16 Appellant.

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APPEAL NO.: OPA-PA-13-006

**A.B. WON PAT INTERATIONAL
AIRPORT AUTHORITY, GUAM'S
MOTION TO MAINTAIN THE
EXISTING STAY OF APPEAL WHILE
THE MOTION TO DISQUALIFY
PUBLIC AUDITOR IS PENDING**

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**A.B. WON PAT INTERATIONAL AIRPORT AUTHORITY, GUAM'S MOTION TO MAINTAIN THE
EXISTING STAY OF APPEAL WHILE THE MOTION TO DISQUALIFY PUBLIC AUDITOR IS PENDING**

1 The A.B. Won Pat International Airport Authority, Guam (“GIAA” or “Airport”), by and
2 through its attorneys, Calvo Fisher & Jacob LLP, hereby moves to extend the existing stay of this
3 appeal while GIAA’s motion to disqualify Public Auditor Doris Flores Brooks (the “Public
4 Auditor”) from adjudicating this appeal before the Office of Public Accountability (“OPA”) is
5 pending.

6 **I. INTRODUCTION**

7 GIAA has separately moved to disqualify the Public Auditor from hearing the appeal
8 brought by DFS Guam, L.P. (“DFS”) in this matter because the Public Auditor has a conflict of
9 interest, the Public Auditor has apparently prejudged DFS’s appeal, and recusal or disqualification
10 is necessary in order to preserve the public’s confidence in the procurement process. If GIAA’s
11 motion is granted, the Public Auditor will not be replaced; instead, DFS’s appeal will proceed
12 directly in the Superior Court of Guam.

13 Therefore, while GIAA’s disqualification motion is pending, the existing stay of DFS’s
14 appeal should remain in place.¹ First, the due process concerns raised by GIAA in its motion
15 warrant preserving the existing stay while the motion is under consideration. Those concerns
16 implicate the fairness of any proceedings before the Public Auditor on the substance of DFS’s
17 appeal. Indeed, any proceedings that take place before the Public Auditor regarding the substance
18 of DFS’s appeal will be tainted by DFS’s concealment of DFS’s retention of the Lujan Firm and its
19 refusal to disclose information about the role the Lujan Firm and Jim Brooks have played. Second,
20 removing the stay while GIAA’s motion to disqualify the Public Auditor is pending would be
21 wasteful of the resources of the Public Auditor, the parties, and the litigants, particularly because
22 any record created before the Public Auditor will be rendered void by her subsequent recusal or
23 disqualification. Preserving the existing stay is warranted under these circumstances.

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26 ¹ On September 15, 2014, DFS filed a Request for (1) Scheduling Order and (2) Status Conference and Hearing (the
27 “Request”). In the Request, DFS asks that the OPA hold a status conference and hearing on or around October 29,
28 2014 and issue a scheduling order setting forth dates proposed by DFS. In light of this motion to stay and the
concurrent motion to disqualify, it would be premature for GIAA to respond to the Request and therefore reserves its
right to do so accordingly. However, if, for whatever reason the OPA denies this motion to stay, GIAA will promptly
(or within the time required by the OPA) file a response to the Request.

1 **II. ARGUMENT**

2 **A. Due Process Requires the Public Auditor to Stay These Proceedings While**
3 **GIAA’s Motion to Disqualify Is Pending**

4 In its motion to disqualify the Public Auditor, GIAA cited authority demonstrating that a
5 question regarding the Public Auditor’s impartiality implicates the parties’ constitutional rights; “a
6 fair trial in a fair tribunal is a basic requirement of due process. This applies to administrative
7 agencies which adjudicate as well as to courts.” *Withrow v. Larkin*, 421 U.S. 35, 46 (1975)
8 (internal quotations and citation omitted). Because it implicates the parties’ due process rights, a
9 motion to disqualify must be resolved before the Public Auditor proceeds on the merits:

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11 A challenge to an assigned judge for want of impartiality presents an issue
12 of constitutional dimension which must be resolved and the rule
13 memorialized of record after a meaningful evidentiary hearing. The quest
14 for recusal may not be ignored, nor is a judge free to proceed with the case
until the challenge stands overruled of record following a judicial inquiry
into the issue. . . .

15 *Miller Dollarhide, P.C. v. Tal*, 163 P.3d 548, 552 (Ok. 2007) (quoting *Clark v. Bd. of Educ. of*
16 *Indep. Sch. Dist. No. 89*, 2001 OK 56, 32 P.3d 851 [citations omitted, emphasis in original]). This
17 principle has been enshrined by statute or rule in several states. *See, e.g.* Cal. Code Civ. Proc. §
18 170.4(d); Tenn. Sup. Ct. R. 10B § 1.02. Moreover, while Guam law does not specifically require a
19 stay pending a motion to disqualify a judge, the procedures of 7 GCA § 6107 effectively preclude a
20 Guam judge from proceeding on the merits of a case while a motion to disqualify is pending.
21 Because those procedures do not apply to the Public Auditor, a simple order continuing the
22 existing stay of proceedings is warranted and would be sufficient to protect the due process rights
23 of the parties.

24 **B. Continuing the Existing Stay Is Warranted As a Matter of Fairness and**
25 **Judicial Economy**

26 “[T]he power to stay proceedings is incidental to the power inherent in every court to
27 control the disposition of the causes on its docket with economy of time and effort for itself, for
28 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The exertion of this

1 power calls for the exercise of a sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
2 1962). A court considering a motion to stay must examine: (1) “possible damage which may result
3 from the granting of a stay,” (2) “the hardship or inequity which a party may suffer in being
4 required to go forward,” and (3) “the orderly course of justice measured in terms of the simplifying
5 or complicating of issues, proof, and questions of law which could be expected to result from a
6 stay.” *Id.* (citing *Landis*, 299 U.S. at 254-55). The same factors are relevant to a motion to stay
7 under consideration by the Public Auditor.

8 Here, all of these factors support granting a stay. First, there is no possible damage that
9 may result from granting this stay. DFS faces no irreparable injury in this case, and this case has
10 already been stayed for more than a year. Preserving the existing stay – which could result in a
11 delay of a few weeks – will not affect DFS’s rights in any way. On the contrary, DFS should be
12 estopped from even arguing prejudice given its own conduct of concealing the Public Auditor’s
13 conflict and subsequently refusing to disclose the material facts relating to that conflict after it
14 became known. Second, all of the parties will suffer hardship if they are required to go forward
15 while GIAA’s motion to disqualify is pending. Because Guam law provides that this matter will
16 proceed directly to the Superior Court of Guam in the event of the Public Auditor’s recusal or
17 disqualification, *see* 2 GAR Div. 4 § 12601, the time and expense of any and all preparations,
18 submissions, and hearings before the Public Auditor will be wasted if GIAA’s motion is granted.
19 Third, the orderly course of justice is promoted by a stay because it will simplify the record in
20 any action in the Superior Court of Guam not to have a partial record developed before the Public
21 Auditor that will likely be considered to be void in the event the Public Auditor recuses herself or
22 is disqualified. For these reasons, maintaining the existing stay is the most prudent, efficient, and
23 fair way for the Public Auditor to proceed while GIAA’s motion to disqualify is pending.

24 **III. CONCLUSION**

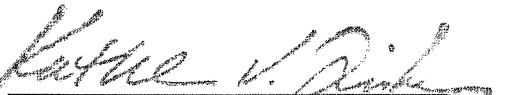
25 While GIAA’s motion to disqualify the Public Auditor is pending, any proceedings
26 concerning the substance of DFS’s appeal will be wasteful for resources and potentially prejudicial
27 to GIAA given the concerns raised by this motion. Moreover, given DFS’s concealment of DFS’s
28 retention of the Lujan Firm and its refusal to disclose information about the role the Lujan Firm

1 and Mr. Brooks have played after repeated attempts by GIAA to obtain such information, any
2 further proceedings by the Public Auditor regarding the substance of DFS's appeal will be tainted
3 by the many unanswered questions that any reasonable member of the public would have about the
4 Public Auditor's ability to act impartially.

5 Therefore, based on the foregoing, GIAA hereby requests that the Public Auditor maintain
6 the existing stay of DFS's appeal while GIAA's motion to disqualify the Public Auditor is
7 pending.

8 Respectfully submitted this 19th day of September, 2014.

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10 **CALVO FISHER & JACOB LLP**
11 Attorneys for Agency
12 A.B. Won Pat International Airport Authority, Guam

13 By 
14 **KATHLEEN V. FISHER**

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