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OFFICE OF THE PUBLIC AUDITOR

# Fax

**To:** Elyze J. McDonald, Esq. – Atty. For Appellant  
Donna E. Lawrence, Esq. – Atty. For Appellee  
Joaquin C. Arriola Jr. / Leevin T. Camacho,  
Esq. – Atty. For Interested Party

**From:** OPA Procurement Appeals

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**Agency:** Carlsmith Ball LLP  
Office of the Attorney General  
Arriola, Cowan, & Arriola

**Pages:** 11 (Including cover)

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**CC:** Claudia S. Acfalle – Chief Procurement Officer  
General Services Agency

**Date:** Monday – 8/4/08

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475-1727 / 475-4217

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**Re:** (1) Decision and Order re Appellant's Motion for Default  
(2) Decision re Marianas Variety Guam's Request for  
Disqualification of Hearing Officer: OPA-PA-08-007

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 Theresa Gumataotao – 475-0390 x 207 [tgumataotao@guamopa.org](mailto:tgumataotao@guamopa.org)

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PROCUREMENT APPEALS

IN THE APPEAL OF,  
GUAM PUBLICATIONS, INC.,  
Appellant.

) APPEAL NO. OPA-PA-08-007  
)  
) **DECISION RE MARIANAS VARIETY**  
) **GUAM'S REQUEST FOR**  
) **DISQUALIFICATION OF HEARING**  
) **OFFICER**

To: **Attorney for the Appellant – Guam Publications, Inc.**  
Elyze J. McDonald  
Carlsmith Ball LLP  
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VIA FACSIMILE: 671-477-4375

**Attorney for the Purchasing Agency – General Services Agency**  
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Assistant Attorney General  
Office of the Attorney General  
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VIA FACSIMILE: 671-472-2493

**Attorneys for the Interested Party - Marianas Variety Guam**  
Joaquin C. Arriola, Jr., Esq.  
Arriola, Cowan, & Arriola  
259 Martyr Street, Suite 201  
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VIA FACSIMILE: 671-477-9734

**THIS MATTER** came before the Hearing Officer pursuant to Interested Party Marianas Variety Guam's (Hereafter Referred to as "Marianas Variety") July 23, 2008 Request for

1 Disqualification of Hearing Officer. After reviewing the request and the relevant law, and  
2 pursuant to 5 G.C.A. §9222, the Hearing Officer has determined the following:

3 1. Marianas Variety's grounds for the Request for Disqualification are insufficient to  
4 show that the Hearing Officer cannot accord a fair and impartial hearing or consideration of this  
5 matter. A hearing officer shall involuntarily disqualify himself and withdraw from any case in  
6 which he cannot accord a fair and impartial hearing. 5 G.C.A. §9222. Administrators serving as  
7 adjudicators are presumed to be unbiased. *Allen v. Cuomo*, 100 F.3d 253, 259 (2d Cir., 1996).  
8 Further, the burden of overcoming the presumption of impartiality of an administrative agency  
9 rests on party making the assertion of bias, and presumption can be overcome only with  
10 convincing evidence that risk of actual bias or pre-judgment is present. *Navstar Intern. Transp.*  
11 *Corp. v. U.S.E.P.A.*, 941 F.2d 1339, 1360 (6<sup>th</sup> Cir., 1991). Here, Marianas Variety argues two  
12 (2) grounds for disqualification of the Hearing Officer.

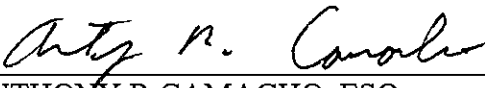
13 First, Marianas Variety alleges that the Hearing Officer has an existing and ongoing  
14 business relationship with Appellant Pacific Daily News (Hereafter referred to as "PDN") due to  
15 the Hearing Officer's placement of advertisements for his private law practice in their  
16 newspaper, and that, based on this, the Hearing Officer's Impartiality might reasonably be  
17 questioned. Generally, recusal is not warranted for remote, contingent, or speculative reasons.  
18 *U.S. v. International Broth. Of Teamsters, Chauffeurs, Warehousemen and Helpers of America,*  
19 *AFL-CIO*, 831 F.Supp. 278, 286 (S.D.N.Y., 1993). Here, other than stating that the Hearing  
20 Officer advertises in the PDN's newspaper, the Marianas Variety does not state or show how  
21 such advertising gives the Hearing Officer any interest in the outcome of this matter to the extent  
22 that his impartiality is impaired or could reasonably be questioned. Thus, the Hearing Officer  
23 finds that the advertisements in the PDN in question do not prevent him from according a fair  
24 and impartial hearing in this matter and they do not create the reasonable appearance of  
25 partiality.

26 Second, Marianas Variety argues that the Hearing Officer has prejudged the issue of  
27 whether the PDN is the only newspaper of general circulation on Guam by publishing legal  
28 notices in other cases in the Marianas Variety and that a fair and impartial hearing cannot be had  
for this reason. Generally, mere proof that administrative official has taken public position, or

1 has expressed strong views, or holds underlying philosophy with respect to issue in dispute  
2 cannot overcome presumption that official is objective. *Housing Study Group v. Kemp*, 736  
3 F.Supp. 321, 332 (D.D.C. 1990). Here, the Hearing Officer's publication of legal notices for his  
4 private law practice in the Marianas Variety only indicate that the Hearing Officer has taken a  
5 position that such notices are legally sufficient for the legal cases the notices are for, which are  
6 unrelated to this matter. The Hearing Officer finds that such public position or strong view in  
7 those unrelated cases does not prevent him from according a fair and impartial hearing in this  
8 matter nor does it create the reasonable appearance of partiality or prejudgment of any issue in  
9 this matter.

10 2. Based on the foregoing, the Marianas Variety's Request for Disqualification of  
11 Hearing Officer is hereby **DENIED**.

12  
13 **SO ORDERED** this 4<sup>th</sup> day of August, 2008 by:

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18 ANTHONY R. CAMACHO, ESQ.  
19 Hearing Officer  
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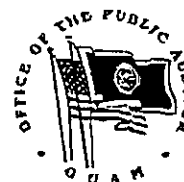
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