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 Hagåtña, Guam 96910



TRANSMITTAL

To:	Mr. Venido Torres Office of the Governor 513 West Marine Corps Drive Ricardo J. Bordallo Governor's Complex Hagatna, Guam 96910 Email: procurement@guam.gov	From:	Mitchell F. Thompson Hearing Officer Office of Public Accountability
	Ms. Jessica Toft, Assistant Attorney General Office of Attorney General 590 S. Marine Corps Drive ITC Bldg., Ste. 802 Tamuning, Guam 96913 Email: jtoft@oagguam.org ;	Pages:	5 (including cover page)
CC:	Ms. Jacqueline Taitano Terlaje, Esq. Law Office of Jacqueline Taitano Terlaje, P.C. Attorney for Appellant Data Management Resources, LLC. 248 West Chalan Santo Papa Hagatna, Guam 96910 Phone: (671) 648-9001 Fac: (671) 648-9002 Email: info@terlajelaw.com ; jterlaje@terlajelaw.com	Date:	June 24, 2022
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-22-004 Hearing Officer's Response to Appellant's Notice of Potential Disqualification of Hearing Officer

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

In the Appeal of)
)
)
Data Management Resources, LLC,)
)
)
Appellant.)
_____)

Appeal No: OPA-PA-22-004

**HEARING OFFICER'S RESPONSE
TO APPELLANT'S NOTICE OF
POTENTIAL DISQUALIFICATION
OF HEARING OFFICER**

To: **Purchasing Agency:**
Office of the Governor
c/o Jessica Toft, Esq.
Assistant Attorney General
Office of Attorney General
ITC Building
590 S. Marine Corps Drive, Ste. 802
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Appellant:
Data Management Resources, LLC
c/o Jacqueline Taitano Terlaje, Esq.
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The undersigned, the duly-appointed hearing officer in the above-entitled procurement appeal proceeding, submits his response to the Notice of Potential Disqualification of Hearing Officer submitted by Appellant Data Management Resources, LLC (“DMR”) herein. In its notice, DMR does not address the rigorous standard required for recusal of an administrative

hearing officer. Further, DMR overlooks the well-established rule that, purported prejudice towards a party's attorney, as opposed to the party itself, is insufficient grounds to require recusal of a judge, let alone an administrative hearing officer.

I. PARTY SEEKING RECUSAL OF ADMINISTRATIVE HEARING OFFICER MUST ESTABLISH ACTUAL PREJUDICE

In Sule v. Guam Board of Dental Examiners, 2008 Guam 20, the Supreme Court set out the standard for recusal of an administrative hearing officer under Guam law. The Court rejected the “appearance of impropriety” standard applicable to judges. Sule v. Guam Board of Dental Examiners, *supra*, ¶19. Instead the Court requires that a party seeking to recuse an administrative hearing officer must establish the higher standard of actual bias before recusal is required. *Ibid*.

Guam is not alone in requiring a higher standard of prejudice be established to recuse an administrative hearing officer. See Bunnell v. Barnhart, 336 F.3d 1113, 1115 (9th Cir. 2003) (party seeking recusal of ALJ must establish actual bias rather than merely appearance of impropriety); Winkler v. Commissioner of Social Security, 2019 WL 4747709, at *12 (E.D. Cal. 2019) (same).

See also Gerawan Farming, Inc. v. A.L.R.B., 52 Cal. App.5th 141,207, 265 Cal. Rptr.3d 752 (2020) (standard of impartiality required at administrative hearing is less exacting than that required in a judicial proceeding); So. Cal. Underground Contractors, Inc. v. City of San Diego, 108 Cal. App.4th 533, 539, 133 Cal. Rptr.2d 527 (2003) (Bias in administrative hearing can never be implied and some suggestion or appearance of bias is not sufficient to require recusal).

In this case, DMR fails to address the applicable standard for recusal, let alone explain how the undersigned purportedly holds actual bias against DMR. Under these circumstances, recusal of the undersigned is not required

II. PURPORTED BIAS AGAINST A PARTY’S ATTORNEY IS INSUFFICIENT TO REQUIRE RECUSAL OF A JUDGE

As noted above, recusal of a judge, as opposed to an administrative hearing officer, can be established through the lesser standard of appearance of impropriety. However, even under that lesser standard, courts routinely rejects claims that a judge’s purported bias towards its attorney constitutes grounds for recusal.

A party seeking to recuse a judge must establish prejudice directed against that party, and prejudice towards its attorney is insufficient. United States v. Carigan, 600 F.2d 762, 764 (9th Cir. 1979). The fact that a judge and a party had been opposing counsel in many prior instances was no basis for recusal. Savage v. Savage, 230 S.E.2d 851, 852 (Ga.1976).

See also Bocian v. Owners Ins. Co., 482 P.3d 502, 509-510 (trial judge properly refused to recuse itself; plaintiff’s claim that the judge had made disparaging remarks towards plaintiff’s counsel in other cases, and had issued adverse rulings in those cases, was insufficient to require recusal); City of Las Vegas Downtown Redevelopment Agency v. Hecht, 940 P.2d 127, 128 (Nev.1997) (“This court has consistently held that the attitude of a judge towards the attorney for a party is largely irrelevant”). State v. Mata, 789 P.2d 1122, 1125-26 (Haw.1990) (Judge’s referral of party’s attorney to Disciplinary Counsel in prior case was insufficient grounds for recusal).

In Martin v. Beck, 915 P.2d 898 (Nev.1996), the Nevada Supreme Court noted that the rationale for the rule that purported bias towards a party’s lawyer is insufficient grounds for recusal is especially pertinent for smaller jurisdictions. The Court explained that:

[I]n a small state such as Nevada, with a concomitantly limited bar membership, it is inevitable that frequent interactions will occur between the members of the bar and the judiciary. Thus, allegations of bias based upon a judge’s associations with counsel for a litigant

pose a particularly onerous potential for impeding the dispensation of justice.

Martin v. Beck, *supra*, p. 899.

Our Supreme Court has raised similar concerns based on the insular nature of the interactions of professionals on Guam:

[I]t is impractical to apply an appearance of impropriety standard to a proceeding in which members of the same profession in a small local area are called upon judge another member of their profession.

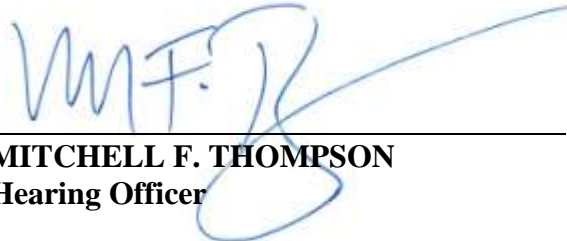
Sule v. Guam Board of Dental Examiners, 2008 Guam 20, ¶19.

In this matter, DMR simply states that the undersigned is opposing counsel in two other civil matters with its own counsel. There is no analysis or discussion how such fact demonstrates purported prejudice of the undersigned against DMR. This failure to allege, let alone demonstrate, any prejudice towards DMR itself renders its objection to the undersigned meritless.

III. CONCLUSION

Based on the foregoing, there is no basis to require the recusal of the undersigned as hearing officer in this procurement appeal proceeding.

Dated this 24th day of June, 2022.



MITCHELL F. THOMPSON
Hearing Officer

P223151.MFT



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-22-004 Hearing Officer's Response to Appellant's Notice of Potential Disqualification of Hearing Officer

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Jun 24, 2022 at 2:24 PM

To: Jacqueline Terlaje <jterlaje@terlajelaw.com>, ADMIN DESK <info@terlajelaw.com>, Jessica Toft <jtoft@oagguam.org>, procurement@guam.gov

Hafa Adai,

Please see attached Hearing Officer's Response to Appellant's Notice of Potential Disqualification of Hearing Officer for OPA-PA-22-004. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

Office of Public Accountability – Guam

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