

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant Harbor Center Guam respectfully requests that the Public Auditor, Doris Brooks, recuse herself from this appeal because her husband, James Brooks, works for Appellee's law firm.

Guam Procurement law provides:

Disqualification of Public Auditor. The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant facts prior to hearing. The Public Auditor shall make a determination and notify all parties. In the event of disqualification or recusal of the Public Auditor, a procurement Appeal must be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480. G.A.R. Div. 4, §12601.

It is a breach of ethical standards for a government employee to participate directly or indirectly in a procurement when the government employee knows that any member of her immediate family has a financial interest pertaining to procurement. 5 G.C.A. § 5628(a)(1). "Direct or indirect participation" is defined as "involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity." 5 G.C.A. § 5601(d). Here, Doris Brooks, as the Public Auditor of Guam, is the Administrative adjudicator of this appeal. Her role as the Public Auditor involves investigating, auditing, and ultimately deciding a procurement appeal. Decision and Order Re: Purchasing Agency's Motion for the Public Auditor to Recuse Self, *In the Appeal of Teleguam Holdings LLC*, Appeal No. OPA-PA-10-002. Therefore, Doris Brooks directly or indirectly participates in this appeal.

The term “immediate family” is defined as spouse, children, parents, brothers, and sisters. 5 G.C.A. § 5601(g). Doris Brooks’ husband, James Brooks is her immediate family.

“The term “financial interest” means involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$2,500.00 per year or its equivalent. 5 G.C.A. § 5601(e)(1). James Brooks, is a paralegal at Appellee’s law firm, Lujan Aguigui and Perez LLP. See Affidavit of Sarah Strock. As a paralegal it is likely that James Brooks makes more than \$2,500.00/ year. The Public Auditor previously recused herself in *In the Appeal of Teleguam Holdings LLC*, where her step son, Terrence Brooks, was legal counsel for one of the Appellants. Decision and Order Re: Purchasing Agency’s Motion for the Public Auditor to Recuse Self, *In the Appeal of Teleguam Holdings LLC*, Appeal No. OPA-PA-10-002. In *The Appeal of Teleguam Holdings LLC*, the Public Auditor held that Terrence Brooks, as one of Appellant’s legal counsels, had a financial interest in Appellant because it was “likely” that he had been paid more than \$2,500.00 in the past year by the Appellant.

Similarly, in this case, the Public Auditor’s husband, James Brooks, works for Appellee’s law firm, Lujan Aguigui & Perez LLP as a paralegal. As a paralegal, James Brooks makes more than \$2,500.00 or its equivalent in the past year. See Affidavit of Sarah Strock. Therefore, the Public Auditor has the ethical duty not to participate in this appeal because a member of her immediate family, her husband, James Brooks, has a financial interest in this matter.

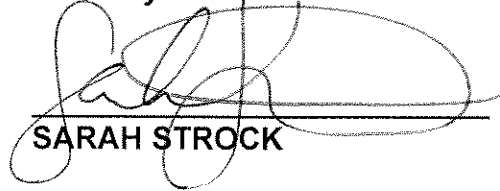
Since the Public Auditor has an ethical duty not to participate in this appeal, she

should recuse herself pursuant to 2 G.A.R. Div. § 12601 and this appeal must be taken to the Superior Court in accordance with 5 G.C.A. § 5480.

Respectfully submitted this 4 day of October, 2010.

CABOT MANTANONA LLP
Attorneys for Harbor Center Guam

By:



SARAH STROCK