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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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 FILE NO OPA-PA: 15-009

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

<p>In the Appeal of:</p> <p>KORANDO CORP.</p> <p style="padding-left: 150px;">Appellant,</p> <p>Department of Public Works</p> <p style="padding-left: 150px;">Purchasing Agency</p>	<p>) DOCKET NO. OPA-PA: 15-009</p> <p>)</p> <p>) DEPARTMENT OF PUBLIC WORKS'</p> <p>) MOTION TO DISQUALIFY OFFICE OF</p> <p>) CIVILLE & TANG;</p> <p>) MEMORANDUM OF POINTS AND</p> <p>) AUTHORITIES</p> <p>)</p> <p>)</p>
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INTRODUCTION

The Department of Public Works, Government of Guam regrestfully files this Motion to Disqualify Joyce H.C. Tang, Esq. and the Law Offices of Civile & Tang from representing Korando Corporation ("Korando") in the above styled matter. This Motion is based on the grounds that Ms. Tang's representation of Korando in the current matter constitutes concurrent conflict of interest under GRPC Rule 1. 7 and taints the proceedings under GRPC Rule 1.10.

ORIGINAL

STATEMENT OF FACTS

In the spring of 2007, the Government of Guam acting through the Department of Public Works and the Federal Highway Administration (“FHWA”) entered into a stewardship agreement establishing the framework for the use of federal funds for Guam’s road program. The Guam Transportation Group (“GTG”) was formed in 2007 to provide policy direction and overall guidance related to the vision, goals and objectives of the 2030 Guam Transportation Plan. PTG’s responsibilities include, but are not limited to, providing a full range of planning, design, engineering, environmental, construction management and operations and maintenance services. PTG’s assistance in the planning, program management, concept design and construction management of Guam’s road system with DPW extends far beyond attending weekly GTG meetings to include regular meetings with DPW management; onsite inspections, coordinating with Project contractors and consultants, etc.

In the fall of 2015 PTG, an existing client of the firm, retained Civile & Tang to represent it in a Route 4 personal injury lawsuit filed by Krystal and Mark Pangelinan (the “Route 4 Project”) in which PTG would have been responsible for the general oversight and monitoring of the FHWA funded project. PTG’s services on the Route 4 project, were the same as on the Bile/Pigua Bridge Reconstruction Project (the “Bile/Pigua Project”), and included, but were not limited to, monitoring of the Route 4 contractor’s progress. PTG and Michael Lanning were directly involved with the Director’s decision to suspend operations on the Route 4 Project due to quality issues and were directly involved with the Director’s decision to terminate Korando in July of this year for breach of contract.

Recently, Civile & Tang filed a breach of contract appeal on behalf of Korando claiming that DPW wrongfully terminated the contractor on the Bile/Pigua Project. As issues relating to the

planning, design, engineering, construction management, and the Route 4 and Korando contractors and PTG and Mr. Lanning's involvement and recommendations to suspend/terminate are substantially similar there is an obvious conflict of interest with Civile & Tang's concurrent representation of both Korando and PTG.

Further evidencing that a direct conflict exists, Civile & Tang has attempted to coordinate a number of times with the Guam Attorney General's Office to schedule depositions. That Civile & Tang need to coordinate depositions through the AG's office as opposed to PTG's local counsel, raising serious ethical concerns. Finally, attached hereto as Exhibit "A" is a copy of Civile and Tang's fourth (4th) Guam Sunshine Act, dated October 5, 2015, request ("4th FOIA Request") in which Korando seeks, in essence, copies of *all* material documents related to *any* FHWA funded project since 2010 (which will necessarily include the Route 4 Project litigation in which Civile and Tang represent PTG). DPW's estimated cost to respond to Civile & Tang's first two (2) FOIA requests is estimated to be just under Five Thousand Dollars (\$5,000). PTG's Mr. Lanning informed DPW that for it to properly respond to Civile & Tang's 4th FOIA request requiring information on federally funded DPW highway projects from 2010 to October 5, 2015, PTG:

will take a substantial amount of time to complete. My estimate based on what we have already done on one project is that 1000 labor hours will be needed to complete the request. This is equivalent to 2 full time persons working for nearly 63 working days or approximately just under 3 months. My estimated labor costs for this one request is \$32,550 but it may end up being higher.

Attached hereto as Exhibit "B" is a copy of PTG's Michael Lanning's Declaration, dated October 28, 2015. Thus, the most immediate and practical effect of Civile & Tang's unreasonable and unrelated to the matter in dispute FOIA requests is that the firm's own client, PTG, is forced to devote approximately seventeen per cent (17%) of its work force to produce materials that are admittedly of no use to Korando, debilitate PTG's work force and cost an exorbitant sum to DPW.

Civille and Tang's demands from one client in furtherance of the litigation objectives of another could not be more adverse and hostile.

Assistant Attorney General Keeler has made a number of requests noting Civille & Tang's 4th FOIA Request appears unrelated to Korando's OPA Appeal, but instead appears to be motivated solely to harass DPW and government operations, and has requested that they be withdrawn and resubmitted with the scope of inquiry narrowed to the matter in dispute. Civille & Tang has failed to respond.

ARGUMENT

The Guam Rules of Professional Conduct were adopted September 29, 2003 pursuant to Promulgation Order No. 04-002, from the 2002 American Bar Association Model Rules of Professional Conduct. Rule 1.7 provides in pertinent part:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;
or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

GRPC, Rule 1.7. Rule 1.10 provides in pertinent part:

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

GRPC, Rule 1.10(a).

"Disqualification is appropriate where an attorney's conduct threatens to work a continuing taint on the litigation and trial." *Gifford v. Target Corp.*, 723 F.Supp.2d 1110, 1116 (D. Minn. 2010) (citation omitted). Factors to be considered include a court's "duty to maintain public confidence in the legal profession and its duty to

insure the integrity of the judicial proceedings.” *Id.* at 1116–17 (citation omitted). The party seeking disqualification bears the burden of showing that such a sanction is warranted. *A.J. by L.B. v. Kierst*, 56 F.3d 849, 859 (8th Cir.1995). “[A]ny **legitimate doubts must be resolved in favor of disqualification.**” *Gifford*, 723 F.Supp.2d at 1117.

Hamilton v. City of Hayti, 2014 WL 7157329 * 1 (E.D. Mo. 2014) (editorial brackets in original; emphasis in bold added; additional citations omitted); *accord*, *Giambrone v. Meritplan Ins. Co.*, ___ F.Supp.3d ___, 2015 WL 4602869 (E.D. N.Y. 2015) (“any doubt is to be resolved in favor of disqualification”) (quoting *Hull v. Celanese Corp.*, 513 F.2d 568, 571 (2d Cir. 1975).

“[T]he paramount concern must be the preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar. Consequently, the recognizably important right to choose one’s counsel must yield to the ethical considerations that embody the moral principles of our judicial process.” *State Farm Mut. Auto. Ins. Co. v. Fed. Ins. Co.*, 72 Cal.App.4th 1422, 1428, 86 Cal.Rptr.2d 20 (1999); *Lennar Mare Island, LLC v. Steadfast Ins. Co.*, ___ F.Supp.3d ___, 2015 WL 1540638 * 5 (E.D. Cal. 2015).

Concurrent representation of parties adverse to one another is considered “*prima facie* improper.”

One established ground for disqualification is concurrent representation, an attorney’s simultaneous representation of one existing client in a matter adverse to another existing client. *Cinema 5, Ltd. v. Cinerama, Inc.*, 528 F.2d 1384, 1387 (2d Cir. 1976). Because concurrent representation is “*prima facie improper*,” it is incumbent upon the attorney to “show, at the very least, that there will be no actual or apparent conflict in loyalties or diminution in the vigor of his representation.” *Id.* at 1387.

GSI Commerce Solutions, Inc. v. BabyCenter, LLC, 618 F.3d 204, 209 (2d Cir. 2010). “The existence of an ongoing attorney-client relationship raises an irrebuttable presumption that confidences are disclosed.” *Hamilton*, 2014 WL 7157329 * 3.

“An attorney has an ethical obligation to his or her client that does not admit of competing allegiances.” *S. Council of Indus. Workers v. Ford*, 83 F.3d 966, 968

(8th Cir.1996) (quoting *Chapman v. Klemick*, 3 F.3d 1580, 1511 (11th Cir. 1993)); see also *Missouri v. Planned Parenthood of Kansas*, 66 S.W.3d 16, 19 (Mo.2002) (“An attorney owes a duty of undivided loyalty to the client.”). If the representation is against an existing client, not just a former one, the balance shifts even more significantly toward disqualification. *Melamed v. ITT Continental Baking Co.*, 592 F.2d 290, 292 (6th Cir. 1979); *Cinema 5, Ltd., v. Cinerama*, 528 F.2d 1384, 1386 (2d Cir. 1976).

Id. * 3.

Many courts have reached the conclusion that the bar to concurrent representation applies if a firm’s representation adverse to a client’s corporate affiliate “reasonably diminishes the level of confidence and trust in counsel held by [the client].” *Certain Underwriters at Lloyd’s, London v. Argonaut Ins. Co.*, 264 F.Supp.2d 914, 922 (N.D.Cal.2003) (internal quotation marks omitted); see also *Discotrade Ltd. v. Wyeth–Ayerst Int’l, Inc.*, 200 F.Supp.2d 355, 358–59 (S.D.N.Y. 2002); *Hartford Accident & Indem. Co. v. RJR Nabisco, Inc.*, 721 F.Supp. 534, 540–41 (S.D.N.Y.1989); *John Steele, Corporate–Affiliate Conflicts: A Reasonable Expectations Test*, 29 W. St. U.L.Rev. 283, 311–13 (2002). Put another way, these courts focus on the reasonableness of the client’s belief that counsel cannot maintain the duty of undivided loyalty it owes a client in one matter while simultaneously opposing that client’s corporate affiliate in another. See, e.g., *Certain Underwriters at Lloyd’s, London*, 264 F.Supp.2d at 922; *Discotrade Ltd.*, 200 F.Supp.2d at 358–59.

GSI Commerce Solutions, 618 F.3d at 210.

Attorneys owe current clients a duty of undivided loyalty to avoid undermining public confidence in the legal profession and the judicial process. When a law firm simultaneously represents clients who have conflicting interests, with few exceptions, disqualification follows automatically, regardless of whether the simultaneous representations have anything in common or present any risk that confidences obtained in one matter would be used in the other. The default rule for a concurrent conflict in California is automatic disqualification in all but a small number of cases. **This is because the primary value at stake in cases of simultaneous or dual representation is the attorney’s duty—and the client’s legitimate expectations—of loyalty, rather than confidentiality. This strict per se rule recognizes that a client cannot be expected to sustain trust and confidence in his or her counsel who is also representing the client’s adversary in litigation. An attorney’s conflict is imputed to the law firm as a whole.**

Western Sugar Coop. v. Archer-Daniels-Midland Co., ___ F.Supp.3d ___, 2015 WL 690306 * 4

(C.D. Cal. 2015) (citations, quotations, and footnote omitted’ emphasis in bold added). “When

evaluating whether a law firm may concurrently represent two clients, **even on unrelated matters,**

it is presumed that the duty of loyalty has been breached and counsel is automatically disqualified, unless full reasonable disclosure is made and both clients knowingly agree in writing to waive the conflict.” *Id.* * 5 (emphasis in bold added).

The rule against concurrent conflicts is less forgiving [than the rule against successive representation under Rule 1.9]. **An attorney will be automatically disqualified from simultaneously representing two clients with adverse interests without both clients’ informed, written consent, even if the two matters have nothing in common.** *Flatt*, 9 Cal.4th at 284, 36 Cal.Rptr.2d 537, 885 P.2d 950; *see also W. Sugar Coop. v. Archer–Daniels–Midland Co.*, ___ F.Supp.3d ___, ___, No. 11–3473, 2015 WL 690306, at *4 (C.D. Cal. Feb. 13, 2015) (collecting authority on this point). “It is immaterial whether the lawyer possesses confidential information that could be misused to the prejudice of either client.” *Cal. W. Nurseries, Inc. v. Superior Court*, 129 Cal.App.4th 1170, 1175, 29 Cal.Rptr.3d 170 (2005) (citations and internal quotation marks omitted). As the California Supreme Court explains:

A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship. All legal technicalities aside, few if any clients would be willing to suffer the prospect of their attorney continuing to represent them under such circumstances.

Flatt, 9 Cal.4th at 285, 36 Cal.Rptr.2d 537, 885 P.2d 950 (emphasis in original). “Ethical walls” or “screens,” which may prevent a conflict of interest from arising in a successive representation, “do nothing to mitigate conflict arising from concurrent adverse client relationships, since the purpose of the prohibition against such relationships is to preserve the attorney’s duty of loyalty, not confidentiality, to his client.” *Concat*, 350 F.Supp.2d at 822.

Lennar Mare Island, ___ F.Supp.3d at ___, 2015 WL 1540638 * 7 (emphasis in bold added; quoting *Concat LP v. Unilever, PLC*, 350 F.Supp.2d 796, 814 (N.D. Cal. 2004)).

Permitting Tang to continue to serve as an advocate in the Korando Appeal in which she has attempted to depose PTG’s Mr. Lanning, who will testify in the proceedings before the OPA as Plaintiff’s primary witness and who she has harassed with FOIA requests that are both unduly

burdensome and unrelated to the issues on appeal severely compromises not only PTG's but the public's expectations that their attorney's loyalty is paramount.

Client loyalty is at the heart of the conflict of interest rules. Comment (I), Model Rule 1.7. Civile & Tang have a serious conflict of interest in representing PTG on the Route 4 lawsuit and Korando on Korando's OPA Appeal. It is clear that their loyalty to Korando is paramount to that of PTG, how else does one explain trying to schedule a firm's clients representative's deposition via the AG's office and, when that fails, contacting PTG's Mr. Lanning directly with full knowledge that PTG is not properly represented by counsel, other than, of course, PTG's local counsel, Patrick Civile.

In addition to loyalty, independent judgment is an essential element in the lawyer's relationship to her client. Comment (I), Model Rule 1.7. Here Tang and Civile's independent judgment is clearly compromised. For example, Tang's overzealous and unreasonable defense of Korando at the expense of her firm's client PTG results in PTG being required to devote large amounts of labor and resources to FOIA requests that their attorney Civile may not pursue certain actions on behalf of PTG (e.g., advising not to agree to a deposition in an OPA case at least if not subpoenaed to do so by the Hearing Officer, etc.)

The duty to avoid conflicts arises at the beginning of the representation. *See In the Matter of Sklar*, 2 Cal. State Bar Ct.Rptr. at 615-616, 1993 WL 518336 (noting that "the duty to avoid conflicts ... arises at the outset of the employment when there has been little if any opportunity for investigation into the merits of the case." Whether the attorney believes there is no conflict of interest between joint clients is irrelevant. *See id.* at 616 (rejecting the attorney's argument that he did not need to obtain the informed consent of his clients when he believed there was no conflict between them). As the court noted in *Belcher v. Northwest Airlines*, 858 F.Supp. 1442, 1454 (C.D.

Cal. 1994), “[b]ecause obtaining a written waiver requires little effort, informs and protects clients, and avoids costly evidentiary and credibility disputes, the rule is inflexible.” *Id.*, 858 F.Supp. at 1455. Of course, Ms. Tang has not obtained a waiver in this case.

As the court in *In re Jaeger* explains, “[t]he failure to obtain a written consent to a potential conflict of interest ... in effect gives a wild card to each of the clients. At any time thereafter during the representation, any of the clients may play the wild card and require the withdrawal of the attorney (and the attorney’s law firm) entirely from the case.” 213 B.R. 578, 586 (C.D. Cal. 1997).

Irrespective of whatever justification Ms. Tang relied on in deciding that filing the present Appeal on behalf of Korando did not conflict to Civile & Tang’s client PTG, she was on notice of the existence of an actual conflict when she contacted the Attorney’s General’s office to depose PTG’s Mr. Lanning and, when that failed, she contacted Mr. Lanning directly with the knowledge that here firm represents PTG in a substantially related matter. Finally as PTG will be DPW’s primary witness at the OPA hearing, Ms. Tang, in complying with her ethical obligations to Korando, will need to aggressively cross-examine PTG’s Mr. Lanning, which would be in direct conflict with Civile & Tang’s other client in this matter, PTG. *See Hernandez v. Paicius*, 109 Cal.App.4th 452, at 467, (2003) (noting that after the trial court denied a motion in limine to exclude evidence of the charges, defense counsel conducted a vigorous cross-examination that the court of appeal described as “skewering her own client on the witness stand in the interest of defending another client.”). The *Hernandez* court stated further that defense counsel “demonstrated a dulled sensitivity to professional ethics and engaged in an egregious and shocking breach of her duty of loyalty to” the witness. *Id.* at 466. And that is precisely what Ms. Tang has demonstrated she intends to do here in pursuit of Korando’s appeal: skewer her own client in the interest of another.

Both as a matter of law and by examining the relevant facts here, it is clear that there was a conflict of interest at the outset of Civile & Tang's representation of Korando taking an active position adverse to its own client in a substantially related matter, PTG.

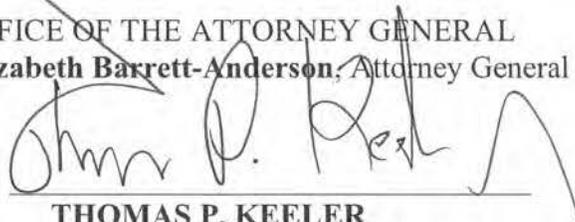
CONCLUSION

For all the foregoing reasons, the Department of Public Works, Government of Guam, respectfully requests that the Joyce H.C. Tang, Esq., and the law firm of Civile & Tang be disqualified from representing Korando Corporation in Appeal OPA-PA-15-009.

Dated this 28th day of October, 2015.

OFFICE OF THE ATTORNEY GENERAL
~~Elizabeth Barrett-Anderson, Attorney General~~

By:



THOMAS P. KEELER
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the forgoing upon opposing counsel by hand delivery addressed to:

Joyce C.H. Tang, Esq.
CIVILLE & TANG PLLC
2330 Heman Cortez Ave. Ste. 200
Hagatna, Guam 96910

this 28th day of October, 2015.

By:

A handwritten signature in black ink, appearing to read 'Thomas P. Keeler', written over a horizontal line.

THOMAS P. KEELER

Assistant Attorney General

EXHIBIT A

CIVILLE & TANG, PLLC

www.civilletang.com

Sender's Direct E-Mail:
jtang@guamattorneys.com

October 5, 2015

VIA E-MAIL

Mr. Glenn Leon Guerrero
Director
GUAM DEPARTMENT OF PUBLIC WORKS
542 North Marine Corp Drive
Tamuning, Guam 96913

Re: *Sunshine Act Request to DPW regarding DPW Federal
Highway Funded Projects*

Dear Glenn:

Korando Corporation requests, pursuant to the Guam Sunshine Act set forth at 5 G.C.A. §10101 *et seq.*, copies of the following:

1. The following documents for each federally-funded DPW highway project from 2010 to October 5, 2015:
 - a. Notice of Award
 - b. Contract, and any amendments or modifications to the Contract.
 - c. Notice to Proceed
 - d. Final or Last Payment Application
 - e. Any Notice of Completion
 - f. Final or Last Submittal Log
 - g. Any DPW reports relating to progress on each of these projects.
2. All documents in the Sharepoint server for Project No. GU-NH-NBIS(007).
3. All minutes, records, or documents related to the May 6, 2015 meeting referenced in Tom Keeler's May 7, 2015 email to Glenn Leon Guerrero, Joaquin Blaz, Joy Jean Mantanona, Michael Lanning, Anderson Butler, Joseph Pecht, and Jack Marlowe.
4. All minutes, records, or documents related to the May 15, 2015 meeting between representatives of DPW, Parsons Transportation Group, Korando, and Stanley Consultants.

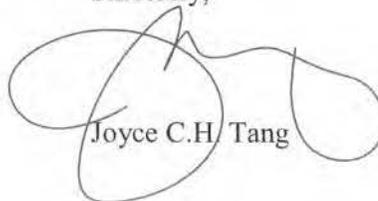
Mr. Glenn Leon Guerrero
October 5, 2015
Page 2

5. All written communication, including but not limited to electronic mails, reports, pleadings, appraisals, letters, and hand written notes related to any property condemned in connection with the Bile & Pigua Bridge Reconstruction Project, Project No. GU-NYH-NBIS(007).

If any of the foregoing documents or information are exempt from disclosure, please release the non-exempt portions. My client agrees to pay reasonable fees incurred in the copying of these documents. If you are able to provide the copies electronically, that would be greatly appreciated.

Please do not hesitate to contact me at 671-472-8868 if you have further questions or comments.

Sincerely,



Joyce C.H. Tang

EXHIBIT B

DECLARATION OF MICHAEL LANNING OF PARSONS TRANSPORTATION GROUP IN SUPPORT OF DPW'S MOTION TO DISQUALIFY THE LAW FIRM OF CIVILLE & TANG IN REPRESENTING KORANDO CORPORATION IN OPA-PA-15-009

MICHAEL LANNING makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed by Parsons Transportation Group ("PTG"), an Illinois corporation, authorized to conduct business on Guam, with offices for the practice of professional engineering and construction management services are located at the ITC Building, 590 South Marine Corps Drive, Suite 403, Tamuning, Guam, 96913. I have been a licensed professional engineer for thirty-one (31) years and have worked on or overseen approximately seventy-five (75) road and transportation projects. I am a duly licensed engineer and a member in good standing with the Guam Professional Engineers Architects and Land Surveyors Board.

2. I submit this Declaration to disclose what appear to be conflicts of interest arising out of Civile & Tang, PLLC's ("Civille & Tang") concurrent representation of PTG in the Route 4 Personal Injury lawsuit, known as *Pangelinan v. Government of Guam, Department of Public Works, et al.*, Guam Superior Court, Civil Case No. CV 0419-14 (referred to herein as the "Route 4 lawsuit"), and other legal matters, the exact nature of which I am not familiar with, and Civile & Tang's subsequent filing of an appeal before Guam's Office of Public Accountability on behalf of Korando Corporation ("Korando's OPA Appeal") concerning a separate FHWA funded project, the Bile/Pigua Bridge Reconstruction Project (the "Bile/Pigua Project"), Appeal No. OPA-PA-15-009.

3. In early 2008, PTG was added to the Guam Transportation Group ("GTG"), which was formed in 2007, to provide policy direction and overall guidance to the goals and objectives of the department's 2030 Guam Transportation Program. PTG, whose contract was renewed in May 2013, is tasked with compliance management assistance, augmenting the forward planning and execution effort by DPW, in addition to providing advice, guidance and services to the DPW.

4. PTG has one client on Guam, that being the Department of Public Works ("DPW"). To perform its services on behalf of DPW's Highway Division. PTG has eleven (11) full time employees, with another two (2) employees of a sub-consultant to PTG assigned to its office. The goal and responsibility of these thirteen (13) individuals is to assist DPW, primarily on the planning, design, construction and repair of Guam's routed roads that are funded by the FHWA.

5. My responsibilities as the Guam Program Manager of PTG include, but are not limited to, the general oversight and monitoring of all FHWA funded projects by meeting and communicating with DPW's Director Glenn Leon Guerrero, its Deputy Director, Vicente C. Benavente, DPW's Acting Highway Administrator, Joaquin Blaz, as well as Assistant Attorney General Thomas P. Keeler, who I understand is assigned to the department's Highways Division by the Office of the Attorney General for Guam. I communicate and meet with DPW's Director, Deputy Director and Highways Acting Administrator, as well as other DPW staff members throughout the work day and week. Further, it is standard business for the Director and DPW

Management to meet with and consult with me before making any major decisions on Guam's FHWA funded roadway projects.

6. I am advised that Civile & Tang has represented PTG or other business units of Parsons Corporation of which PTG is also a business unit for quite some time; however, I am not familiar with the nature of these projects. In October of 2014 PTG referred a new matter to Civile & Tang, namely the Route 4 lawsuit, a FHWA funded highway project.

7. Of critical importance in the Route 4 lawsuit is DPW's then Director's decision, supported by the GTG, that pavement work be suspended due to concerns about the quality of the asphalt mixture. PTG, as a member of the GTG, made recommendations regarding the pavement work that is an issue in the Route 4 lawsuit.

8. Similar to the Route 4 Project, GTG, along with me and other PTG staff members monitored Korando's progress, or lack thereof, on the Bile/Pigua Project, in particular following DPW's January 5, 2015 Notice to Proceed ("NTP"). Concerns with Korando's ongoing lack of progress began to be of major concern when in an early March 2015 GTG weekly meeting DPW's Director expressed concerns that there was no activity on the Bile/Pigua Project. Over the next three (3) to four (4) months PTG, and other members of the GTG, continued to monitor Korando's lack of progress, and for the reasons explained in DPW's filings in OPA-PA-15-009, was significantly involved in leading up to and recommending the Director's decision to issue Korando a formal Notice to Cure ("NTC"), and then a Notice to Terminate ("NTT"). To further evidence PTG's direct involvement with DPW's day to day operations it reviewed and prepared the final draft of the NTC and NTT, as well as the earlier letter to the Route 4 Project contractor suspending pavement work.

9. I was surprised when I was discovered that Civile & Tang had filed Korando's OPA Appeal, as I felt PTG and my involvement and recommendations that DPW suspend pavement work on the Route 4 Project, currently at issue in the Route 4 lawsuit, were substantially similar to the process employed by PTG and DPW's Director in terminating Korando. I reviewed the conflict issue with PTG's stateside in-house counsel.

10. My concern with Civile & Tang's conflict of interest was reinforced when AAG Keeler informed me that Ms. Tang was hoping to coordinate with him on scheduling my deposition. I informed him that I viewed PTG and DPW interests, at least with regards to FHWA funded projects and the Highway Division, the same and that I considered it highly unusual and possibly unethical for PTG's law firm, Civile & Tang, to depose me to gather information to use against the department in Korando's OPA Appeal. Ms. Tang next wrote me directly via a September 17, 2015 email requesting a meeting the following day. Attached as Exhibit "A" and incorporated herein by reference, is a copy of her email. Again I considered this highly unusual and possibly unethical and did not respond other than to forward a copy of Ms. Tang's email to AAG Keeler.

11. Another item that I believe evidences an actual conflict with Civile & Tang's representation of PTG and subsequent filing of Korando's OPA Appeal concerns Ms. Tang's FOIA requests and her failure, notwithstanding being advised of such, to fully understand that

along with its numerous other responsibilities to DPW, PTG also maintains its FHWA records. As such PTG is responsible for preparing the copies needed for the Director to formally respond to FOIA requests. Of particular concern is Ms. Tang's October 5, 2015 Sunshine Act Request ("4th FOIA Request") that in general requires that DPW produce all material documents on all FHWA funded projects since 2010, which I estimate to be in excess of over sixty (60) projects. Based on my involvement with Guam's FHWA highway projects, I am aware of only one of these projects that can be viewed as reasonably related to Korando's OPA Appeal. I have advised DPW of such. To the extent this FOIA request is a burden on DPW and its operations, it is also a burden on PTG and its operations.

12. I informed DPW that through October 9, 2005, compliance with Ms. Tang's FOIA requests had cost just under Five Thousand Dollars (\$5,000). The real concern however is that in order to respond to Ms. Tang's 4th FOIA Request it is estimated to cost an additional Thirty Two Thousand Five Hundred and Fifty Dollars (\$32,550). Just as important is the fact that at times I have been forced to assign up to five (5) different staff members to work on the various FOIA replies. For the 4th FOIA Request PTG has decided to devote two (2) full time staff members working for an estimated one-thousand (1000) labor hours or sixty three (63) working days. I am aware that Ms. Tang is on notice that a) DPW has notified her that the 4th FOIA Request is overly burdensome, b) the materials requested are not reasonably related to Korando's OPA Appeal, and c) that in addition to adversely impacting DPW's activities it is also causing disruptions with PTG's day-to-day operations, Civile & Tang's other client.

13. DPW informs me that it intends on calling me and possibly other PTG staff to testify at the OPA Hearing. Being examined by PTG's law firm Civile & Tang, in the context of the Korando OPA Appeal appears to create a genuine and unavoidable conflict of interest.

I declare under penalty of perjury that the aforementioned is true.

Dated: October 28, 2015.


Michael Lanning