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By order of the Court, *Presiding Judge Roberto C. Naraja*

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**EDWARD MANIBUSAN, in his official
capacity as the Attorney General of the
Commonwealth of the Northern Mariana
Islands,**

Plaintiff,

v.

**LARRISA LARSON, in her official
capacity as the Secretary of Finance of the
Commonwealth of the Northern Mariana
Islands,**

Defendant.

CIVIL ACTION NO. 17-0047

**ORDER DENYING DEFENDANT’S
MOTION TO DISQUALIFY**

I. INTRODUCTION

THIS MATTER came before the Court on May 3, 2017 at 9:30 a.m. in Courtroom 202A for a motions hearing. Civil Division Chief Christopher M. Timmons (“CDC Timmons”) represented Plaintiff Attorney General Edward Manibusan (“AG Manibusan”). Attorneys Kimberlyn K. King-Hinds and Matthew T. Gregory represented Defendant Secretary of Finance Larrisa Larson (“SF Larson”). The Court heard arguments on SF Larson’s two pending motions: (1) a motion to disqualify AG Manibusan and the Office of the Attorney General (“OAG”) and (2) a NMI R. Civ.

1 P. 56 motion for summary judgment. After reviewing the facts of this case, the arguments of the
2 parties, and the relevant law the Court **DENIES** SF Larson’s motion to disqualify.¹

3 **II. BACKGROUND**

4 On February 9, 2017, AG Manibusan filed his complaint against SF Larson claiming that
5 she should be enjoined from distributing any pay raises pursuant to Public Law 19–83 (“PL 19–
6 83”). On the same day, AG Manibusan sent a letter to SF Larson informing her that he was suing
7 her in her official capacity. The letter further informed SF Larson that since she was a current client
8 of the OAG she was entitled to seek independent legal representation for this case since the OAG
9 would be unable to provide her with conflict free counsel. However, the OAG would continue to
10 provide her with representation in all other matters. On February 23, 2017, SF Larson sent an email
11 to AG Manibusan requesting a thirty day extension to respond to AG Manibusan’s request for a
12 preliminary injunction. AG Manibusan’s counsel in this matter, CDC Timmons, responded that SF
13 Larson could have the requested thirty days and drafted a stipulation, which would have prohibited
14 SF Larson from paying out any raises pursuant to PL 19–83. The parties never agreed to the
15 stipulation. Thereafter, SF Larson retained independent counsels, Kimberlyn K. King-Hinds and
16 Matthew T. Gregory, who filed the two motions now before the Court. The Court is confronted
17 with the question of whether AG Manibusan and/or the OAG should be disqualified from this
18 matter pursuant to the MODEL RULES OF PROFESSIONAL CONDUCT (2016) (“MRPC”).

19 **III. LEGAL STANDARD**

20 The MRPC govern the activities of attorneys in the Commonwealth pursuant to NMI R.
21 ATT’Y DISC. & P. R. 3(1), which provides: “An attorney is subject to discipline for any of the
22 following causes occurring within or outside the Commonwealth: . . . Any act or omission that
23

24 ¹ For clarity and organizational purposes, the Court’s decision on Defendant’s NMI R. Civ. P. 56 motion for summary judgment is contained in a separate order.

1 violates the most recent version of the Model Rules of Professional Conduct of the American Bar
2 Association.”

3 MRPC Rule 1.7 (“Rule 1.7”) and MRPC Rule 1.10 (“Rule 1.10”) are the primary provisions
4 of the MRPC relevant to the matter at hand. Rule 1.7(a) provides:

5 Except as provided in paragraph (b), a lawyer shall not represent a client if the
6 representation involves a concurrent conflict of interest. A concurrent conflict of
7 interest exists if: (1) the representation of one client will be directly adverse to
8 another client; or (2) there is a significant risk that the representation of one or more
9 clients will be materially limited by the lawyer's responsibilities to another client, a
10 former client or a third person or by a personal interest of the lawyer.

11 Rule 1.10(a) goes on to provide: “While lawyers are associated in a firm, none of them shall
12 knowingly represent a client when any one of them practicing alone would be prohibited from
13 doing so by Rules 1.7 or 1.9”

14 The decision whether a conflict under the MRPC requires disqualification of an attorney is
15 soundly within the Court’s discretion. *Commonwealth v. Buckingham*, Crim. No. 12–0134 (NMI
16 Super. Ct. Aug. 16, 2013) (Order Granting the Commonwealth’s Motion to Disqualify Counsel and
17 Denying Defendant’s Cross-Motion to Disqualify Counsel at 2) (hereinafter “*Buckingham*”) (citing
18 *Feliciano v. Commonwealth Superior Court*, 1999 MP 3 ¶ 38). “In exercising that discretion, the
19 trial court is required to make a reasoned judgment which complies with the legal principles and
20 policies applicable to the issue at hand.” *Feliciano*, 1999 MP at ¶ 38.

21 **IV. DISCUSSION**

22 SF Larson’s motion to disqualify AG Manibusan presents the Court with a number of
23 overlapping questions: (A) whether the MRPC bar AG Manibusan from being a party to an action
24 where the opposing party heads a governmental agency which has and continues to receive legal
advice from the OAG; (B) whether the OAG’s representation of SF Larson is such that the conflict
should be automatically imputed onto CDC Timmons as well as all the other attorneys that work for

1 the OAG; and (C) whether the OAG has established adequate screening procedures, which protect
2 client confidences.

3 **A. MRPC Impact on AG Manibusan’s Status as a Party.**

4 SF Larson contends that AG Manibusan should not be allowed to be a party in this matter
5 because SF Larson is a current client of the OAG, which is under the direction of AG Manibusan.
6 SF Larson argues that Rule 1.7 prohibits her counsel, AG Manibusan, from undertaking an action,
7 which is directly adverse to her. AG Manibusan responds that SF Larson misinterprets the
8 application of the MRPC to the Attorney General.

9 The correct rule is that if the Attorney General is a party to a dispute, in exercise of his
10 constitutional and/or statutory authority, where he is also required to provide counsel to the
11 opposing party, such as a government agency, then he must appoint independent counsel to
12 represent the opposing party. *See Att’y Gen. v. Mich. Pub. Serv. Comm’n*, 625 N.W.2d 16, 30–31
13 (Mich. Ct. App. 2000) (hereinafter “*AG v. PSC*”).

14 In *AG v. PSC*, the Michigan Court of Appeals directly addressed whether an attorney
15 general can become a party to a legal dispute against an agency opponent even when the attorney
16 general represents the agency. *Id.* The case dealt with an appeal where the court sua sponte raised
17 the issue of a conflict because both sides of the lawsuit were represented by assistant attorney
18 generals. *Id.* at 19–20. The court held that “pursuant to the rules of professional conduct, if the
19 Attorney General chooses to stand in opposition to a state agency or department as an actual party
20 litigant and yet simultaneously attempts to represent that state agency in the litigation, such dual
21 representation creates a conflict of interest that must be addressed and rectified.” *Id.* at 34. The *AG*
22 *v. PSC* court ruled that the attorney general could rectify the conflict by appointing independent
23 counsel to represent the party opposite the attorney general. *Id.* at 30–31. The *AG v. PSC* court

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1 correctly recognized that the hard and fast rule that a Rule 1.7 conflict requires disqualification
2 needed to be somewhat relaxed because of the unique constitutional role of an attorney general. *Id.*

3 In the Commonwealth, the Attorney General has broad constitutional and statutory authority
4 as the chief legal officer. *See* NMI CONST. art. III, § 11; 1 CMC 2153. The NMI Constitution
5 provides: “The Attorney General shall be the Chief Legal Officer of the Commonwealth
6 government and shall be responsible for providing legal advice to the governor and executive
7 departments (including public corporations and autonomous agencies), representing the
8 Commonwealth in all legal matters, and prosecuting violations of Commonwealth law” NMI
9 CONST. art. III, § 11. The NMI Constitution unequivocally provides that the Attorney General has
10 extensive powers. The Attorney General’s broad and overlapping authority inherently comes into
11 conflict at times; this case is a prime example. On the one hand, AG Manibusan has a constitutional
12 duty to provide legal advice to SF Larson; on the other, he is empowered to prosecute violations of
13 Commonwealth law. Here, AG Manibusan argues that he is seeking to enjoin violations of the NMI
14 Constitution, the supreme law of the Commonwealth, by ensuring SF Larson does not pay out
15 allegedly impermissible pay raises. AG Manibusan is caught between his overlapping roles,
16 providing legal representation and prosecuting Commonwealth law, which are unique to his
17 constitutional office.

18 Applying the MRPC mechanically would unduly constrain AG Manibusan because he
19 would practically be unable to prosecute violations of Commonwealth law. Therefore, an
20 accommodation like the one in *AG v. PSC* is appropriate. AG Manibusan proactively notified SF
21 Larson about the suit and the conflict and indicated that SF Larson could seek out private counsel to
22 represent the interests of her office. Moreover, AG Manibusan appointed independent counsel to
23 represent SF Larson in this case so as to ensure that SF Larson was and is ethically represented by
24 loyal counsel. In sum, SF Larson’s argument that AG Manibusan cannot be a party to this suit, due

1 to the MRPC, fails because AG Manibusan proactively appointed independent counsel to represent
2 SF Larson, which comports with the spirit and purpose of the MRPC.²

3 **B. Imputation of Conflicts to All OAG Attorneys.**

4 SF Larson also contends that the OAG is violating the MRPC by continuing to represent AG
5 Manibusan because the OAG has and continues to represent SF Larson in numerous other matters.
6 SF Larson argues that since she is a current client of the OAG all attorneys that work at the office
7 are barred from representing AG Manibusan because he is directly adverse to her. Essentially, SF
8 Larson requests that the Court issue a ruling, which imputes the Rule 1.7 conflict to all attorneys
9 practicing in the OAG, including AG Manibusan's current counsel CDC Timmons.³ AG Manibusan
10 responds that while SF Larson correctly recites Rule 1.7 and Rule 1.10 she applies the MRPC
11 incorrectly because a Rule 1.7 conflict is not imputed on a government attorney in the same way as
12 in private practice.

13 AG Manibusan correctly argues that in the context of government attorneys, such as those
14 that practice at the OAG, the key benchmark for imputing a conflict is whether the specific attorney
15 has been exposed to confidential client information. *See Buckingham* at 6. If the AAG assigned to a

16 ² It is also important to note that in *AG v. PSC*, the Court found that the preamble to the MRPC supported its decision to
17 allow the Attorney General to intervene as a party so long as independent counsel was appointed. *AG v. PSC*, 625
N.W.2d at 28. The preamble of the MRPC provides, in part:

18 Under various legal provisions, including constitutional, statutory and common-law, the
19 responsibilities of government lawyers may include authority concerning legal matters that ordinarily
20 reposes in the client in private client-lawyer relationships. For example, a lawyer for a government
21 agency may have authority on behalf of the government to decide upon settlement or whether to
22 appeal from an adverse judgment. Such authority in various respects is generally vested in the
attorney general and the prosecuting attorney in state government, and their federal counterparts, and
the same may be true of other government law officers. Also, lawyers under the supervision of these
officers may be authorized to represent several government agencies in intragovernmental legal
controversies in circumstances where a private lawyer could not represent multiple private clients.
They also may have authority to represent the "public interest" in circumstances where a private
lawyer would not be authorized to do so. These rules do not abrogate any such authority

23 The preamble of the MRPC highlights that the Court should reasonably accommodate the Attorney General and the
OAG by relaxing, to a degree, the MRPC due to the special constitutional powers of the Attorney General.

24 ³ Assistant Attorney General Michael T. Witry ("AAG Witry") is no longer practicing at the OAG and has since moved
back to the Mainland. As such, Defendant's objection to AAG Witry's representation of AG Manibusan is now moot.

1 case has not received and/or had access to confidential client information then the interoffice
2 conflict should not generally be imputed. *See generally Id.* Such a set up would be prohibited in
3 private practice because traditionally if even one attorney in the office has a Rule 1.7 conflict then
4 all the other attorneys are also conflicted and thus cannot undertake the representation. *See Rule*
5 *1.10.* Whether the attorney assigned to the case has received and/or has access to confidential
6 information as a result of a conflict of interest is the key guidepost for the Court’s analysis.

7 In *Buckingham*, the Court determined that the OAG’s conflict was not imputed onto the
8 special prosecutor appointed to the case because he did not access any confidential information,
9 which would make disqualification appropriate. *Buckingham* at 6. The special prosecutor had been
10 in contact with the Attorney General’s Investigative Unit (“AGIU”) and the defendant argued that
11 in doing so the special prosecutor had been exposed to confidential information, thereby making
12 disqualification appropriate. *Id.* The Court implied that imputation of conflicts operate differently in
13 the government sphere, i.e. the party seeking disqualification needs to show that the attorney[s] to
14 be disqualified had access to confidential information relevant to the case at bar. *Id.* The Court
15 found that the special prosecutor had not been exposed to confidential information as a result of his
16 contacts with the AGIU, making disqualification inappropriate. *Id.*

17 Similarly, in this case, AG Manibusan’s current counsel, CDC Timmons, has submitted a
18 declaration in which he asserts that he has had no access to confidential information pertaining to
19 SF Larson, which is relevant to the matter at hand.⁴ CDC Timmons has further represented to the
20 Court that the rest of the OAG has been screened off from this matter; no one aside from CDC
21 Timmons has access to his files for this matter. CDC Timmons’ representations to the Court
22 strongly support denying SF Larson’s motion because as an officer of the Court he has represented
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24 ⁴ AAG Witry also submitted a declaration that he had not been exposed to any confidential information relevant to the matter at hand.

1 that he has not been, nor will he be, exposed to confidential client information, which is analogous
2 to *Buckingham*.

3 **C. Adequacy of the Screening Procedures Employed In This Case.**

4 In addition to the general question of whether the attorneys from the OAG were exposed to
5 confidential information, the Court must also examine whether the OAG has instituted policies and
6 procedures, which plainly show that there has not been, nor will there be, any impermissible
7 exposure of confidential information. The screening procedures instituted by government attorneys,
8 a so-called “conflict wall,” helps to demonstrate compliance with the MRPC’s requirement that
9 government agencies receive independent and loyal representation.

10 MRPC Rule 1.0(k) (“Rule 1.0(k)”) expressly highlights that the determination of whether a
11 set of screening procedures are sufficient is an extremely case specific task. Rule 1.0(k) states that:
12 “[‘]Screened[’] denotes the isolation of a lawyer from any participation in a matter through the
13 timely imposition of procedures within a firm that are *reasonably adequate under the*
14 *circumstances to protect information* that the isolated lawyer is obligated to protect under these
15 Rules or other law.” (emphasis added). The Court must examine what is reasonable under the
16 circumstances when deciding whether disqualification is appropriate. *Id.*

17 Here, the OAG has a publically available manual, which details the screening procedures
18 employed so as to ensure compliance with the MRPC. *See* Policies and Procedures Manual of the
19 Office of Attorney General, 38 NMI Reg. 038789 (Oct. 28, 2016). In particular, OAG Rule 11.6
20 outlines the full process of how the OAG addresses screening attorneys. *Id.* at 038836. OAG Rule
21 11.6.1.3, titled Adverse Government Agencies, expressly discusses how the OAG handles situations
22 where different parts of the government square off against each other, it provides:

23 There are occasional situations where multiple Assistant Attorneys General
24 participate in the same matter, either in different capacities or representing different
government agencies whose positions in the matter are truly adverse. Screening is

1 not necessarily required by the RPC in such situations since the government and not
2 the individual agency is the client. However, *imposing a level of separation between*
3 *the activities of those attorneys in such circumstances both eliminates any question*
4 *of compliance with the Rules of Professional Conduct and assures the public that the*
Office is carrying out its responsibilities in a fair and equitable manner. In addition,
screening may be used to avoid impermissible ex parte communications under the
Administrative Procedure Act.

5 *Id.* at 038837 (emphasis added). While OAG Rule 11.6.1.3 does not explicitly mandate that
6 screening occur, it nonetheless makes clear that based on the circumstances there may be a need to
7 employ screening when different parts of the government have a legal dispute. The language of
8 OAG Rule 11.6.1.3 provides the OAG with some flexibility while at the same time recognizing that
9 the OAG is obligated to observe the MRPC. In this case, it was clear from the outset that screening
10 would be necessary. As such, the OAG implemented the procedures provided for in OAG Rule
11 11.6.3, titled Staff Located in Same Division or Same Physical Office Location. OAG Rule 11.6.3
12 has a number of subdivisions, which provide the specific steps taken to create a conflict wall. *Id.* at
13 038838–39.

14 OAG Rule 11.6.3.1 mandates that:

15 Separate files will be created for screened matters. There should be a conspicuous
16 indication on the outside of the file that named individual(s) are not to have access to
17 the file. The file should be physically separated from the regular filing system to
which the screened staff routinely have access. Electronic files for screened matters
will be password protected; no screened employee will have access to the files.

18 *Id.* at 038838. CDC Timmons stated during oral arguments that the OAG has been observing OAG
19 Rule 11.6.3.1 throughout this case as well as in the other cases involving SF Larson. CDC Timmons
20 showed the Court his file for this case, which is clearly marked so as to inform anyone who comes
21 across the file who is and is not allowed to access the file. All the files, which have a conflict issue
22 are similarly marked. Further, CDC Timmons confirmed that digital files are either password
23 protected or are not uploaded to the shared network at all.

1 OAG Rule 11.6.3.2 mandates that: “Support staff assigned to work on a screened matter
2 should be different from those who work with the screened Assistant Attorney General.” *Id.* Here,
3 CDC Timmons indicated that the attorneys who work on screened matters usually work on their
4 own, i.e. the role of support staff is usually limited to filing documents with the Court.

5 OAG Rule 11.6.3.3 mandates that:

6 Written notice shall be given to screened staff and to those working on the screened
7 matter, including support staff, that named individuals are screened and that the
8 matter is not to be discussed in the presence of such individual(s). The notice should
9 include directions about what information can be made available to screened staff
(such as the status of matter) and the process through which the information can be
obtained.

10 *Id.* at 038838–39. At this time it is unclear from the record whether an internal memorandum was
11 distributed to all staff of the OAG to inform them of the screening procedures being put in place
12 due to this case. While the Court is not certain that OAG Rule 11.6.3.3 was observed in this case,
13 the Court is satisfied that the scope of the screening put in place was clearly communicated to all
14 OAG staff. Best practices and OAG Rule 11.6.3.3 seem to dictate that an interoffice memorandum
15 be issued at the onset so as to ensure adequate screening.

16 OAG Rule 11.6.3.4 dictates that: “If the screened staff would normally supervise the
17 screened matter, an alternative supervisory arrangement should be made with respect to the
18 screened matter.” *Id.* at 038839. In this case, CDC Timmons and AG Manibusan would normally
19 supervise the attorneys handling matters for SF Larson. However, due to this case, Deputy Attorney
20 General Lillian A. Tenorio (“DAG Tenorio”) has been assigned as the sole member of the OAG
21 who has supervisory authority over the attorneys working on matters involving SF Larson.
22 Moreover, DAG Tenorio has been completely screened off from this case.

23 Finally, OAG Rule 11.6.3.5 dictates that: “If the circumstances indicate that screening is
24 appropriate in a significant number of cases on an on-going basis, these arrangements should be

1 institutionalized as part of routine operations in the affected divisions.” *Id.* OAG Rule 11.6.3.5 is
2 not really applicable to this case. However, CDC Timmons has assured the Court that the OAG will
3 continue to have screening in place as long as the MRPC require it to do so.

4 At this time, the Court is satisfied that not only does the OAG have an adequate screening
5 procedure in place there has also been substantial compliance with the policy. The OAG appears to
6 have taken its duty to put in place a conflict wall seriously. Disqualification of the OAG would be
7 inappropriate because it has diligently labored to preserve client confidences.⁵

8 V. CONCLUSION

9 In sum, SF Larson’s motion to disqualify AG Manibusan and/or the OAG is **DENIED**.
10 Barring AG Manibusan from even being a party to a suit against SF Larson, a government client, is
11 inappropriate because AG Manibusan appointed independent counsel, which alleviates the conflict
12 of interest concern. Also, CDC Timmons should not be disqualified because he has not been
13 exposed to confidential information and the OAG has a conflict wall in place, which ensures that
14 SF Larson’s confidences are protected. Moreover, at this time, it appears that AG Manibusan and
15 his office have struck an adequate balance between the MRPC and NMI CONST. art. III, § 11’s
16 mandate. However, the Court reserves the right to revisit this issue should circumstances change
17 and/or if new information should come to light.

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22 ⁵ The Court notes that Defendant stressed that a conflict wall was not workable because of the small office size of the
23 OAG. While Defendant has a point that the size of the office generally influences the analysis, to make size a
24 dispositive or heavily weighted factor in determining the adequacy of a conflict wall would effectively foreclose the use
of a conflict wall. The MRPC emphasize that screening procedures merely need to be “reasonably adequate under the
circumstances,” which is subjective. *See* Rule 1.0(k). The Commonwealth is a small jurisdiction, which necessitates
placing limited emphasis on the size of the OAG. Instead, the Court’s inquiry focuses more generally on the procedures
instituted.

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IT IS SO ORDERED this 15th day of June, 2017.

/s/
ROBERTO C. NARAJA
Presiding Judge