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**FOR PUBLICATION**

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

**RAMON M. DELA CRUZ, Mayor-elect,  
JUDE U. HOFSCHEIDER, Senator and  
Senator-elect, FRANCISCO Q. CRUZ,  
Senator-elect, AND TRENTON B.  
CONNOR,  
Representative-elect,**

**Plaintiffs,**

**vs.**

**JOSE P. SAN NICOLAS, JOSEPH M.  
MENDIOLA, HENRY H. SAN NICOLAS,  
EDWIN P. ALDAN, AND OFFICE OF THE  
MAYOR OF TINIAN & AGUIGUAN,**

**Defendants.**

**CIVIL ACTION NO. 09-0492(T)**

**DECISION ON ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISQUALIFY  
RAMON K. QUICHOCHO AS  
PLAINTIFFS' LEGAL COUNSEL**

**INTRODUCTION**

THIS MATTER came before the Court on December 18, 2009 at 1:30 p.m. at the Tinian courthouse on Plaintiffs' motion for a preliminary injunction. Also before the Court were Defendants' Motion to Disqualify Ramon K. Quichocho as counsel for the Plaintiffs and Motion for Continuance of Preliminary Injunction Hearing; as well as the Motion to Quash Subpoenas served on William M. Cing and David Maratita. Plaintiffs Dela Cruz, Hofschneider, Cruz, and Connor were present with counsel Ramon K. Quichocho, Esq., and Michael Dotts, Esq. Defendants Henry H. San Nicolas and Edwin P. Aldan appeared pro se; Defendants Jose P. San Nicolas and Office of the Mayor of Tinian & Aguiguan

1 appeared through counsel Matthew T. Gregory, Esq. with William M. Cing, the Tinian Mayor's Office  
2 Chief Executive Officer. Defendant Mendiola failed to appear either personally or through counsel.

3 After reviewing the pleadings, the declarations, and the memoranda filed by both parties, and  
4 after hearing the arguments of counsel, the Court granted Defendants' motion to quash and continued  
5 the hearing date on Plaintiffs' motion for preliminary injunction to December 22, 2009. The Court  
6 further granted Defendants' motion to disqualify Ramon K. Quichocho for the reasons stated on the  
7 record and set forth in the following written decision.

### 8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 On December 4, 2009, Plaintiffs, through attorney Ramon K. Quichocho, Esq., filed a Verified  
10 Complaint for Breach of Fiduciary Duties, Injunctive and Declaratory Relief, naming as Defendants the  
11 Office of the Mayor of Tinian and Aguiguan, as well as the current Mayor, Jose P. San Nicholas, Tinian  
12 Representative Edwin Aldan and Senators Joseph Mendiola and Henry H. San Nicholas. In their  
13 complaint, Plaintiffs claim injury as taxpayers and as newly-elected officeholders resulting in part from  
14 Defendants' pursuit of a loan application with the Marianas Public Land Trust ("MPLT") on behalf of  
15 the Municipality of Tinian, an action that Plaintiffs claim is unlawful. Also on December 4, attorney  
16 Quichocho made an ex parte application on behalf of Plaintiffs for a temporary restraining order and  
17 preliminary injunction to restrain Defendants from taking further action on the MPLT loan application.  
18 On December 16, 2009, Plaintiffs' attorney caused a subpoena to be issued for the production of  
19 documents by the Tinian Mayor's Chief Executive Officer, William Cing, which was served on Mr.  
20 Cing the next day.

21 Defendants filed a motion to disqualify Quichocho from representing Plaintiffs in this matter on  
22 December 16, 2009, alleging that Quichocho had been previously retained to represent Tinian in the  
23 exact same matter of the MPLT loan application. On December 17, 2009, Plaintiffs filed their  
24 opposition to Defendants' motion, denying that an attorney-client relationship ever existed between

1 Quichocho and the Mayor or the Office of the Mayor of Tinian. Quichocho's involvement in the matter  
2 of Defendants' MPLT loan application is described in the affidavits submitted in support of, and in  
3 opposition to, Defendants' motion for disqualification. The factual context of Quichocho's relationship  
4 with Defendants is also supplied through Plaintiffs' admissions stated in their Complaint and the  
5 exhibits attached to, and incorporated therein.

6 A. Tinian Local Ordinance No. 16-02.

7 On October 19, 2009, House Representative Edwin P. Aldan introduced Tinian & Aguiguan  
8 Local Bill No. 16-03 before the Sixteenth Northern Marianas Commonwealth Legislature. The purpose  
9 of the bill was to authorize the Municipality to borrow funds from MPLT against a pledge of repayment  
10 from future casino gaming revenue and fees, with the prospective loan to be "in a principal amount to be  
11 negotiated with MPLT plus interest in repayment on terms and conditions, including amount, *as*  
12 *negotiated between the Municipality, through the Mayor of Tinian and Aguiguan (Mayor), and MPLT.*"  
13 TLB No. 16-03, § 1 (emphasis added). Section 2 of the proposed legislation provided the authorization  
14 for the loan agreement, including the following:

15 Section 2. Authorization and Appropriation: *The Municipality, through the Mayor, is*  
16 *hereby authorized to enter into a Loan Agreement with the MPLT for a negotiated*  
17 *principle amount plus interest and expenses for municipal operational expenses. The*  
18 *authority herein includes the execution of a security agreement and a promissory note*  
19 *with the MPLT, subject to any conditions as may be imposed or required by MPLT.*  
20 TLB No. 16-03, § 2 (emphasis added).

21 On October 20, 2009, the local bill was adopted by a 3-1 majority of the Sixteenth Tinian and  
22 Aguiguan Legislative Delegation, with the concurrence by a 2-1 majority of the Twelfth Tinian and  
23 Aguiguan Municipal Council. The Municipal Council members who signed in favor of TLB No. 16-03  
24 were Municipal Council Chairman Antonio H. Borja and Councilman Eugenio L. Villagomez. TLB No.  
16-03 was certified as a local appropriation bill by House Speaker Arnold Palacios and was approved by  
Governor Benigno R. Fitial on October 21, 2009, becoming Tinian Local Ordinance No. 16-02.

1 B. The MPLT Board of Trustee Terms.

2 On October 23, 2009, the MPLT Board of Trustees met and unanimously approved the  
3 Municipality's loan proposal in principle, subject to MPLT's terms and conditions. The Trustees drafted  
4 and set forth their requirements for the loan, including a list of sixteen enumerated terms and conditions,  
5 which were subsequently approved by resolution on October 30, 2009. (Complaint, Ex. 2; MPLT  
6 Resolution No. 09-07). The conditions to be satisfied by the Municipality for acquisition of the loan  
7 included the following prerequisites:

8 7. The *Tinian Municipality shall obtain an opinion from legal counsel*, stating that (a) the  
9 Municipality has the authority to pledge current and future revenues for the service of this  
10 Investment to pay for local or past debts for operations or municipal expenses; (b) that all  
obligations incurred by this Investment are legal and permissible under CNMI law, and  
(c) the Municipality has the authority to borrow funds for its operation and maintenance.

11 \* \* \*

12 BE IT FURTHER RESOLVED, that *counsel for the Municipality and Tinian Legislative*  
13 *Delegation* shall deliver to MPLT their written legal opinion and analysis confirming the  
14 Tinian Municipality's authority to engage in the loan from and investment by MPLT and  
the legal sufficiency of the foregoing conditions between MPLT, the Tinian Municipality,  
and the Commonwealth Government.  
(*Id.*) (emphasis added).

15 In summary, both Tinian Local Ordinance 16-02 and the MPLT Board of Trustees contemplated  
16 that the proposed MPLT loan to the Municipality would be negotiated and executed on behalf of the  
17 Municipality by the Mayor. As a condition to their agreement, the Trustees required assurance in the  
18 form of written opinions from the legal counsel for the Municipality and the legal counsel for the  
19 Legislative Delegation. At this time, however, the Tinian Mayor's Office did not have its own legal  
20 counsel; its former legal counsel, Joey P. San Nicholas, Esq., had ceased representing the Office on  
21 August 24, 2009. (Decl. of Joey P. San Nicholas, p. 1).

22 On October 30, 2009, the MPLT Board of Trustees was scheduled to meet to consider the terms  
23 and conditions of the proposed loan. At about 8:30 a.m. on October 30<sup>th</sup>, the Mayor's Chief Executive  
24 Officer William Cing telephoned the Mayor's former counsel San Nicholas to request a referral to

1 another attorney who could represent the Mayor's Office in the matter of the proposed MPLT loan.  
2 (Amended Decl. of William M. Cing, p. 2; Decl. of Raymond K. Quichocho, p. 2). San Nicholas  
3 recommended attorney Ramon Quichocho and agreed to telephone Quichocho first to find out if he  
4 would be available and willing to represent the Mayor's Office. At about 9:00 a.m. that morning, San  
5 Nicholas telephoned Quichocho. (*Id.*) San Nicholas advised Quichocho of the proposed MPLT loan  
6 transaction and told him that the Mayor's Office needed a legal opinion to present to MPLT on whether  
7 the Municipality of Tinian and Aguiguan can borrow funds. Quichocho told San Nicholas that he would  
8 be willing to represent the Mayor's Office, but indicated that he had already performed legal services  
9 under a contract with the Twelfth Tinian Municipal Council for which he had not been paid and asked  
10 San Nicholas whether or not his proposed services for the Mayor's Office would require a new contract.  
11 He also inquired whether he could be fully paid for his past services prior to undertaking new work for  
12 the Mayor. (Decl. of Raymond K. Quichocho, p. 2). San Nicholas then called Cing back to inform him  
13 that Quichocho was willing to represent the Mayor's Office but wanted to be paid for his past work  
14 under his contract with the Municipal Council.

15         Shortly afterward, on October 30<sup>th</sup>, Cing telephoned Quichocho directly to confirm that  
16 Quichocho would represent the Mayor's Office in the matter and advised him of MPLT's requirement  
17 that the Municipality provide a written legal opinion from counsel on the authority and permissibility of  
18 the Municipality's execution of the proposed loan. Also at this time, or in a follow-up telephone  
19 conversation, Cing informed Quichocho of the MPLT board meeting scheduled for later that day.  
20 Quichocho requested that the legal questions be put down in writing, whereupon Cing immediately  
21 issued a letter describing the MPLT loan and MPLT's proposed terms and conditions. (Cing Decl., p. 2.  
22 Ex. "A"; Quichocho Decl., p. 3). Cing also spoke with Antonio H. Borja, Chairman of the Twelfth  
23 Tinian Municipal Counsel, to seek his approval for the use of Quichocho's services. (Cing Decl., p. 2;  
24 Decl. of Antonio H. Borja, p. 2). Mr. Borja stated that he did not object to Quichocho representing the

1 Mayor's Office, that "it is up to Attorney Quichocho." (*Id.*) Cing next contacted attorney Lucia Blanco-  
2 Maratita, Esq., who agreed to work on the second required legal opinion as counsel for the Tinian  
3 Legislative Delegation. (Decl. of Lucia L. Blanco-Maratita, p. 2).

4 At approximately 2:00 p.m. on October 30, 2009, Cing and Quichocho together attended the  
5 meeting of the MPLT board on Saipan, the purpose of which was to discuss the proposed loan to the  
6 Municipality. Quichocho was recognized at the meeting as representing Tinian in the matter. (Decl. of  
7 Redie Dela Cruz, p. 2). Shortly after convening, the meeting was moved into executive session, with  
8 MPLT Chairman Alvaro A. Santos stating: "The motion is to get into executive session to discuss legal  
9 issues with the Tinian representatives." (*Id.*) Cing and Quichocho attended this executive session.  
10 Between November 2<sup>nd</sup> and November 20, 2009, Quichocho further met and consulted on these legal  
11 issues with Defendants Aldan, Mendiola and Henry H. San Nicholas, as well as with Tinian Legislative  
12 Delegation legal counsel Lucia L. Blanco-Maratita, all of whom considered Quichocho to be the  
13 Mayor's legal representative in the matter. (Blanco-Maratita Decl., p. 2).

14 Quichocho states that it was made clear in his initial conversations with Cing that Quichocho  
15 worked for the Tinian Municipal Council; that he had no written legal services contract with the Tinian  
16 Mayor's Office, and that all of his activities relating to the MPLT loan application were performed only  
17 after he briefed and received instructions from the Chairman of the Tinian Municipal Council, Antonio  
18 H. Borja. On this basis, Quichocho denies that an attorney-client relationship existed between himself  
19 and the Tinian Mayor's Office.

20 C. Plaintiffs' complaint.

21 Plaintiffs' complaint was filed on December 4, 2009. On December 9, 2009, summons and  
22 copies of the complaint were personally delivered at the Tinian Mayor's Office together with copies of  
23 the Court's December 7<sup>th</sup> Order Denying Plaintiffs' *Ex Parte* Motion for TRO and Setting Hearing for a  
24 Preliminary Injunction. Service of these documents on Mayor Jose P. San Nicholas and on the Office of

1 the Mayor of Tinian and Aguiguan was accepted by Municipal Council Chairman Antonio H. Borja in  
2 his capacity as Acting Mayor.<sup>1</sup>

### 3 ANALYSIS

4 Plaintiffs and Defendants agree that no written contract for legal services was ever executed  
5 between attorney Quichocho and the Office of the Mayor of Tinian, and that there is no written notice of  
6 the termination of an attorney-client relationship that may have existed between them. Defendants claim  
7 that Quichocho was retained by the Mayor's Office specifically to provide legal advice on the MPLT  
8 loan application on behalf of the Municipality of Tinian, that Defendants and the Mayor's Office  
9 supplied Quichocho with confidential information and documents relating to the proposed loan  
10 transaction, and that Quichocho is therefore impermissibly conflicted from representing Plaintiffs in  
11 their taxpayer action against Defendants arising from the same matter.

12 Rule 1.7 of the ABA Model Rules of Professional Conduct (2007)<sup>2</sup> addresses conflict of interest  
13 of current clients. It states in part:

14 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the  
15 representation involves a concurrent conflict of interest.

A concurrent conflict of interest exists if:

- 16 (1) the representation of one client will be directly adverse to another client; or
- 17 (2) there is a significant risk that the representation of one or more clients will be  
18 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.

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19 <sup>1</sup> Tinian Local Law 15-15 currently provides:

20 Whenever the Mayor of Tinian is to be physically absent from the Second Senatorial District of Tinian and  
21 Aguiguan islands, the presiding officer or chairperson of the Municipal Council shall be Acting Mayor. If the  
22 presiding officer or chairperson is also absent, then the vice-chairperson of the Municipal Council shall be  
Acting Mayor. In the event that both the chairperson and vice-chairperson of the Municipal Council are absent,  
then the remaining council member shall be the Acting Mayor. In the event that all members of the Municipal  
Council are absent, then the Mayor shall designate whom shall be the Acting Mayor to carry out the duties of  
the Office of Mayor until the Mayor or any member of the Municipal Council physically returns.

23 10 CMC § 2311 (TLL 15-15, *effective* Feb. 6, 2008)

24 <sup>2</sup> Rule 2 of the Disciplinary Rules & Procedures for Persons Practicing Law in the Courts of the Commonwealth provides that  
“[t]he Model Rules of Professional Conduct adopted by the American Bar Association are applicable in the Commonwealth  
of the Northern Mariana Islands.” Comm. R. of Discipline 2 (1999).

1  
2 Committee Comment 6 to Rule 1.7 explains: “Loyalty to a current client prohibits undertaking  
3 representation directly adverse to that client without that client's informed consent. Thus, absent consent,  
4 a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other  
5 matter, even when the matters are wholly unrelated.”

6 Regarding conflicts with former clients, Rule 1.9 of the ABA Model Rules (2007) states in part:

7 (a) A lawyer who has formerly represented a client in a matter shall not thereafter  
8 represent another person in the same or a substantially related matter in which that  
9 person's interests are materially adverse to the interests of the former client unless the  
former client gives informed consent, confirmed in writing.

10 \* \* \*

11 (c) A lawyer who has formerly represented a client in a matter or whose present or former  
12 firm has formerly represented a client in a matter shall not thereafter:

- 13 (1) use information relating to the representation to the disadvantage of the former  
14 client except as these Rules would permit or require with respect to a client, or  
when the information has become generally known; or  
15 (2) reveal information relating to the representation except as these Rules would  
16 permit or require with respect to a client.

17 Comment 3 to Rule 1.9 states: “In the case of an organizational client, general knowledge of the client's  
18 policies and practices ordinarily will not preclude a subsequent representation; on the other hand,  
19 knowledge of specific facts gained in a prior representation that are relevant to the matter in question  
20 ordinarily will preclude such a representation.”

21 In opposition to Defendants’ motion, Plaintiffs maintain that the legal services Quichocho  
22 provided in relation to the loan proposal were rendered exclusively on behalf of the Twelfth Tinian  
23 Municipal Council and that his client was never the Office of the Mayor of Tinian. Relying upon this  
24 distinction, Plaintiffs contend that Quichocho’s prior involvement in the Municipality’s efforts to secure  
the MPLT loan pursuant to Tinian Local Ordinance No.16-2 poses no conflict with his current  
representation of Plaintiffs in their action to declare the Ordinance unconstitutional and for damages for



1 breach of fiduciary duty against the Mayor and those members of the Tinian Legislative Delegation who  
2 voted in its favor. Because Plaintiffs have not named the Tinian Municipal Council or any of its  
3 members as defendants in their complaint, they argue that Quichocho's current representation of  
4 Plaintiffs is not adverse to his client, the Municipal Council.

5 Plaintiffs' purported distinction is patently untenable, incongruent with the admitted facts, and  
6 fails whatsoever to ameliorate the egregious conflict of interest apparent from Quichocho's  
7 representation of Plaintiffs in their suit against the current Tinian Mayor and Tinian elected officials; an  
8 action arising from the identical subject matter over which the Mayor and these officials formerly placed  
9 their confidence in attorney Quichocho and relied upon him for legal advice. The enactment of Tinian  
10 Local Ordinance 16-2 means that the Municipality of Tinian and Aguiguan and its constituent bodies  
11 possess the same real interest in relation to Plaintiffs' action challenging both the validity of the  
12 Ordinance and lawfulness its enactment. Assuming the cogency and credibility of Plaintiffs' assertion  
13 that Quichocho, with full disclosure, performed his fiduciary services and rendered legal advice on the  
14 matter of the MPLT loan exclusively to, and for the benefit of the Tinian Municipal Council, his avowed  
15 current client, attorney Quichocho is still conflicted from representing Plaintiffs in this matter.

16 As stated boldly in the enactment clause of TLB 16-03, Tinian Local Ordinance 16-2 was  
17 enacted by the Sixteenth Tinian and Aguiguan Legislative Delegation, the Twelfth Tinian and Aguiguan  
18 Municipal Council, and the Municipality of Tinian and Aguiguan. Quichocho's professed client, the  
19 Municipal Council, approved the legislation on October 20, 2009, and it was signed by Council  
20 Chairman Antonio H. Borja. The Tinian Municipal Council and Plaintiffs are on opposite sides of the  
21 controversy raised by Plaintiffs' claim for declaratory relief. The crafting of Plaintiffs' complaint to  
22 name as defendants only those officials who (1) voted in favor of authorizing the MPLT loan, and (2)  
23 were not members of the Municipal Council, does nothing to cure Quichocho's conflict of interest;

1 rather, it starkly exemplifies the detrimental effect of counsel's existing conflict on Plaintiffs' current  
2 representation. *See*, Model Rule 1.7(a)(2).

3 The undisputed subject matter of Quichocho's representation at issue is the Tinian  
4 Municipality's pursuit of a loan from MPLT. TLO 16-2 authorized the Municipality to negotiate and  
5 execute the proposed loan through its Mayor acting in his official capacity, not through any member of  
6 the Tinian Municipal Council. Because MPLT demanded that the Municipality produce a legal opinion  
7 from counsel, Quichocho was approached by the Mayor's representative to provide such opinion on  
8 behalf of the Municipality. A lawyer retained to work for a municipal body or other public entity  
9 represents the public entity acting through its authorized constituents. Model Rule 1.13(a), Comment 9.  
10 The lawyer's "client" is the person or entity who is rendered professional legal services by the lawyer, or  
11 who consults the lawyer with a view to obtaining professional legal services from him. *Westinghouse*  
12 *Electric Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1320 (7<sup>th</sup> Cir. 1978); ABA Model Rules, *Scope*,  
13 paragraph 17. The attorney-client relationship does not depend upon a written contract and the lawyer's  
14 fiduciary obligations are not limited by principles of agency. *Westinghouse*, at 1316-17. Whether  
15 Quichocho took directions from the Mayor as authorized, or from Chairman Borja as Plaintiffs claim, is  
16 of no consequence to the fact that he undertook to represent the Municipality in the matter of the MPLT  
17 loan and thereby engaged the confidences of Defendants acting in their official capacities. Attorney  
18 Quichocho may not represent Plaintiffs in their present action against Defendants based on the same  
19 matter. Model Rule 1.7(a).

### 20 CONCLUSION

21 For the foregoing reasons, Defendants' motion to disqualify Ramon K. Quichocho as attorney  
22 for Plaintiffs in this action is GRANTED.

23 IT IS SO ORDERED this 28<sup>th</sup> day of January, 2010.

24 /s/   
RAMONA V. MANGLOÑA, Associate Judge