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By order of the court, Judge PERRY B. INOS

FOR PUBLICATION



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

FELIPE Q. ATALIG,

CIVIL CASE NO. 10-0361

Plaintiff,

v.

**RAMON M. DELA CRUZ, in his official
and personal capacities, OFFICE OF THE
MAYOR OF TINIAN & AGUIGUAN, ALLEN
PEREZ, in his official and personal capacities,
AND TINIAN MUNICIPAL TREASURY,**

**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

Defendants.

THIS MATTER came before the Court on March 9, 2011, in Courtroom 217A. Robert H. Meyers, Jr. appeared on behalf of plaintiff Felipe Q. Atalig ("Plaintiff"). Craig Dittrich appeared on behalf of the Office of the Attorney General ("OAG"). Lillian Ada Tenorio appeared in a limited capacity on behalf of defendants Raymond M. Dela Cruz, elected mayor of Tinian and Aguiguan ("Dela Cruz") and Allen Perez, acting treasurer of Tinian and Aguiguan ("Perez") (collectively, "Defendants"). The OAG moves to withdraw as counsel for lack of authority to represent the Defendants.

I. FACTUAL BACKGROUND

On December 8, 2010, Plaintiff delivered letters to both Dela Cruz and Perez requesting numerous documents and materials under the Open Government Act. (Petition ¶¶ 13-21.) Defendants failed to respond within ten days of the request and on December 23, 2010, Plaintiff filed a Petition for

1 Mandamus, Declaratory, Injunctive, and Other Relief (“Petition”). (Pet. ¶¶ 17, 22.) On December 27,
2 2010 the OAG, upon request of Defendants, agreed to limited representation. (Mot. at 3.) On January
3 13, 2011, the OAG notified the Defendants that it would no longer be able to represent them. (*Id.*) At
4 the same time, the OAG successfully extended the requisite time to respond to the Complaint so that
5 Defendants could retain substitute counsel. (*Id.*) Nevertheless, on January 28, 2011, the OAG filed
6 an Answer to the Petition as attorney for Defendants. (*Id.* at 4.)

7 8 **II. ISSUE PRESENTED**

9 The issue presented is whether the Office of the Attorney General for the Commonwealth of the
10 Northern Mariana Islands is obligated to represent the Mayor and Treasurer of the Tinian and Aguiguan
11 municipality in an action brought pursuant to the Open Government Act.

12 13 **III. MOTION TO WITHDRAW AS COUNSEL**

14 On February 9, 2011, the OAG filed a Motion to Withdraw as Counsel for Defendants. The
15 underlying reason for their motion is that the OAG does not possess the constitutional or statutory
16 authority to represent the Defendants. (Mot. at 2.) They stated that the Defendants had been given
17 reasonable notice that counsel would withdraw. (Mot. at 3-4.) Defendants oppose the motion.

18 **A. Procedural Requirements**

19 The A.B.A. Model Rules of Professional Conduct, made applicable by Com. Disc. R. 2
20 (“MRPC” or “Model Rules”), govern the conduct of lawyers practicing before the CNMI Courts. The
21 Model Rules specify that a lawyer shall, in compliance with applicable laws requiring notice to or
22 permission of the court, “withdraw from the representation of a client if . . . the representation will
23 result in violation” of any of the Model Rules or other law. MRPC 1.16(a)(1). The Model Rules
24 further provide that a lawyer may withdraw from representing a client if, “withdraw can be
25 accomplished without material adverse effect on the client” or “other good cause for withdraw exists.”
26 MRPC 1.16(b)(1),(7).

27 The Model Rules require that a lawyer seeking to withdraw as counsel “must comply with
28 applicable law requiring notice to or permission of” the court. MRPC 1.16(c). The Commonwealth

1 Rules of Practice provide that an attorney who has appeared in a case may “withdraw from a case by
2 serving notice of his withdraw on his client and all other parties” so long as “such notice is
3 accompanied by notice of the appearance of other counsel”; otherwise, the attorney must seek “leave
4 of court.” NMI R. Prac. 5(d).

5 Here, the OAG, in filing the Motion to Withdraw, has properly sought leave of the Court to
6 withdraw as counsel for Defendants. Moreover, the Motion also includes a certification that it was
7 served to all parties. (*See* Decl. Craig Dettrich at 3.) Therefore, the OAG has satisfied the general
8 requirements of the Commonwealth Rules of Practice Rule 5(d).

9 **B. Analysis**

10 The powers and duties of the OAG are found in the Commonwealth’s Constitution and codified
11 by statute. Our Constitution provides that “[t]he Attorney General shall be responsible for providing
12 legal advice to the governor and executive departments^[1], representing the *Commonwealth* in all legal
13 matters, and prosecuting violations of all Commonwealth law.” NMI Const. art. III § 11 (emphasis
14 added). Furthermore, the OAG shall “act upon request, as counsel to all departments, agencies, and
15 instrumentalities of the Commonwealth, including public corporations, except the Marianas Public
16 Land Trust.” 1 CMC § 2153(h).

17 The OAG argues that it lacks the constitutional or statutory authority to represent the
18 Defendants. (Mot. at 2.) The OAG contends that the scope of its powers and duties are clearly defined
19 by Article III, Section 11 of the Commonwealth Constitution and Title 1, Section 2153(h) of the
20 Commonwealth Code and neither of these sources grants the OAG authority to represent a “political
21 subdivision” or municipality of the central government. (Mot. at 6.)

22
23 ¹The executive branch departments are defined by Article III of the NMI Constitution as:

24 Executive branch offices, agencies and instrumentalities of the Commonwealth
25 government and their respective functions and duties shall be allocated by law among
26 and within not more than fifteen principal departments so as to group them so far as
27 practicable according to major purposes. Regulatory, quasi-judicial and temporary
agencies need not be a part of a principal department. The functions and duties of the
principal departments and of other agencies of the Commonwealth shall be provided
by law.

28 NMI Const. art. III § 15.

1 Defendants interpret NMI Const. art. III § 11 (“representing the Commonwealth in all legal
2 matters”) as mandating the OAG to represent them. They argue that the framers of the Constitution
3 chose to use the word “Commonwealth” and not “executive branch” when defining the powers and
4 duties of the OAG. (Opp. at 1-2.) Defendants contend that this choice of words “suggests that the
5 framers of the Constitution intended to extend and include within the ambit of the OGA’s constitutional
6 mandate public entities beyond the executive branch.” (Opp. at 2.) Furthermore, the term
7 “Commonwealth” is defined as “the government established under the Constitution *which* became
8 effective on January 9, 1978.” (Opp. at 3) (citing 1 CMC § 102) (emphasis added.) To clarify, at oral
9 argument, Defendants argued that 1 CMC § 102 requires that “Commonwealth” be defined under our
10 Constitution as it existed in 1978. Finally, the Defendants contend that the Office of the Mayor of
11 Tinian and Aguiguan were established under Article VI of the Commonwealth Constitution and
12 therefore come within the meaning of “Commonwealth” as used in Article III, Section 11. (Opp. at 3.)

13 The Court notes the important distinction between “that” and “which,” along with
14 accompanying punctuation to complete the meaning of a sentence. The word “which” usually begins
15 a nonrestrictive² clause while the word “that” usually precedes a restrictive³ clause. *See United States*
16 *v. Indoor Cultivation Equip.*, 55 F.3d 1311, 1315 (7th Cir. 1995) (“Congress’s use of the pronoun
17 ‘which’ is significant; it introduces a nonrestrictive clause”); *cf. In re Connors*, 497 F.3d 314, 319 (3d
18 Cir. 2007) (“The word ‘that’ is a relative pronoun that restricts and, therefore, modifies, the preceding
19 noun”); *see also* William Strunk Jr. & E. B. White, *The Elements of Style* 1, 53 (2d ed. 1972) (“*That*
20 *is the defining, or restrictive, pronoun, which the nondefining, or nonrestrictive.*”). A nonrestrictive
21 clause must be set off by commas, while restrictive clauses must not be set off by commas. Strunk &

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23 ² “A nonrestrictive clause is ‘one that does not serve to identify or define the antecedent noun,’ but rather
24 merely ‘adds information about the person, thing, or idea to which the phrase or clause refers.’” Peter Jeremy Smith,
25 *Commas, Constitutional Grammar, and the Straight-Face Test: What if Conan the Grammarian were a Strict*
Textualist?, 16 Const. Commentary 7, 9 (Spring, 1999).

26 ³ “A *restrictive* clause is one that gives us information about the preceding noun or noun phrase (called the
27 antecedent) in order to distinguish the antecedent from other items in the same category.” Richard C. Wydick, *True*
Confessions of a Diddle-Diddle Dumb-Head, 11 Scribes J. Legal Writing 57, 60 (2007).

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1 White, at 3 (clarifying that “[n]onrestrictive relative clauses are parenthetic,” such that “[c]ommas are
2 therefore needed”). The analysis of 1 CMC § 102 is complicated by the fact that the clause does not
3 follow a comma, suggesting that the clause is restrictive; however, the word “which” suggests that the
4 clause is nonrestrictive.

5 A court should not be too generous “in allowing use of punctuation as a tool of statutory
6 interpretation.” Lance Phillip Tambreza, *The Elusive Comma: The Proper Role of Punctuation in*
7 *Statutory Interpretation*, 24 Quinnipiac L. Rev. 63, 67 (2005). As Justice Baldwin stated:

8 Punctuation is a most fallible standard by which to interpret a writing;
9 it may be resorted to, when all other means fail; but the Court will first
10 take the instrument by its four corners, in order to ascertain its true
11 meaning; if that is apparent on judicially inspecting the whole, the
12 punctuation will not be suffered to change it.

13 *Lessee of Ewing v. Burnet*, 36 U.S. 41, 54 (1837). In the instant matter, the Court reads the clause
14 (“which became effective on January 9, 1978”) as descriptive and not limiting. To interpret this clause
15 as restrictive would limit the definition of “Commonwealth” to a static point in time and disregard all
16 following amendments. The Commonwealth Constitution “is a living document and is not static in
17 time.” *Commonwealth v. Suda*, 1999 MP 17 ¶¶16-17. Thus, 1 CMC § 102 must be read in context as
18 referring to the Commonwealth Constitution (which became effective on January 9, 1978) as it exists
19 today, including amendments.

20 In 1985, the Commonwealth Constitution was amended to include Article VI, Section 8 that
21 established the municipalities of Rota and Tinian and Aguiguan as “agencies of local government.”
22 NMI Const. art. VI § 8. Prior to this amendment, each elected mayor’s role was that of advisor to the
23 governor on local matters. *Inos v. Tenorio*, Civil Action No. 94-1289 (Super. Ct. June 14, 1995)
24 (Memorandum Decision and Declaratory Judgment at 3-4) (citing 1976 Journal of the 1976 NMI Con-
25 Con, vol. 1 at xx-xxii). However, after the amendment, the governor must delegate the administration
26 of public services to the mayors of each chartered municipality. *Id.* at 3 (stating that “the initial
27 delegation to the mayor is mandatory”). Thus, there is a clear distinction between the central
28 government and the agencies of local governments.

Viewed in light of the above analysis, the mandate of Article III, Section 11, that the Attorney
General shall represent “the Commonwealth in all legal matters”, does not obligate the OAG to

1 represent political subdivisions of the central government such as the chartered municipality of Tinian
2 and Aguiguan. The Commonwealth Supreme Court case of *United States v. Borja (Mayor of Tinian)*,
3 2003 MP 8, lends further support to this conclusion. In *Borja*, the Commonwealth Supreme Court
4 answered a certified question from the federal district court. The issue in *Borja* was whether the
5 municipality of Tinian and Aguiguan is a chartered municipality such that it can sue and be sued. (*Id.*
6 ¶ 2.) The Court found that Article VI, Section 8, which came about through Amendment 25, “is self-
7 executing, in that it chartered Rota and Tinian and Aguiguan into municipalities.” (*Id.* ¶ 11.) The
8 Court concluded that Tinian and Aguiguan is a chartered municipality that can sue and be sued. (*Id.*
9 ¶ 22.) After receiving this answer from the Commonwealth Supreme Court, the federal district court
10 concluded that the mayor of Tinian and Aguiguan is not a member or agent of the executive branch of
11 the Commonwealth. *United States v. Borja*, 2003 WL 23009006 (D.N.Mar.I).

12 Although, the OAG is not obligated to represent the municipality of Tinian and Aguiguan, the
13 Open Government Act expressly applies to municipalities and political subdivisions. 1 CMC §
14 9902(e)(2) (defining “public agency” as “[a]ny municipality or political subdivision of the
15 Commonwealth”). Therefore, municipal offices, including the mayor’s office, are required to make
16 their non-exempt public records available for inspection within 10 days of a request. 1 CMC § 9917(a).
17 The requirement that Tinian and Aguiguan comply with the Open Government Act does not obligate
18 the OAG to represent them in a matter brought pursuant to the Act.

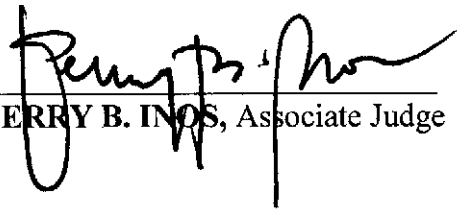
19 In summary, there is no express language in the Commonwealth Constitution or statutes that
20 obligate the OAG to represent the mayor or treasurer of chartered municipalities within the
21 Commonwealth. Furthermore, when the Court looks to the Commonwealth Constitution in defining
22 a term, the Court must consider the document as a whole, including amendments. Amendment 25 of
23 the Commonwealth Constitution changed the local governments by establishing independent chartered
24 municipalities. In so doing, the municipal mayor’s office realized an increase in power and autonomy.
25 The Open Government Act applies to municipal offices, but this fact alone does not obligate the OAG
26 to represent these offices. Thus, the Office of the Attorney General for the Commonwealth of the
27 Northern Mariana Islands is not obligated to represent the Mayor and Treasurer of the Tinian and
28 Aguiguan municipality in an action brought pursuant to the Open Government Act.

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IV. CONCLUSION

Based on the foregoing, the Office of the Attorney General's Motion to Withdraw as Counsel is hereby GRANTED.

SO ORDERED this 3rd day of June, 2011.


PERRY B. INOS, Associate Judge