

No. 26-

IN THE
Supreme Court of the United States

PEOPLE OF GUAM,

Petitioners,

v.

ARTHUR U. SAN AGUSTIN AND
MASATOMO NADEAU,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GUAM

PETITION FOR A WRIT OF CERTIORARI

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With the simple words “*We the People*,” the founders of the United States launched the bold idea that ordinary citizens hold the true power of the government. *See* U.S. Const. pmbl. This case tests the limits of that idea in the context of criminal prosecutions. *First*, all jurisdictions prosecute crimes on behalf of the general public. *Second*, voters in 43 states, D.C., CNMI, and Guam choose their own Attorney General to protect their fundamental rights and freedoms. *Third*, the Attorney General holds exclusive prosecution power in eight jurisdictions: three states and five territories, including Guam. These governmental structures protect the People by advocating for their fundamental rights and freedoms. Therefore, it is a matter of utmost importance when a court summarily disqualifies an elected Attorney General’s **entire** office with exclusive public prosecution authority from advocating for the People’s rights and freedoms.

QUESTION PRESENTED

Whether an appellate court’s summary disqualification of the **entire** office of an elected Attorney General in a prosecutorial appeal from the trial court’s **total** disqualification order and dismissal of a criminal public integrity case violates the public’s fundamental rights to due process and equal protection of the law under the U.S. Constitution when it bases such decision on the enforcement of that disqualification, the merits of which it never reaches, and fails to provide for lawful substitute counsel.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

Petitioners, the People of Guam, are exclusively represented by the Office of the Attorney General of Guam (hereinafter referred to as “**OAG**”) in all matters concerning public prosecutions, including the prosecution of public officials. *See* 5 Guam Code Ann. §§ 30104 and 30109(a).

The Honorable Douglas B. Moylan currently heads the Office of the Attorney General of Guam, having been elected in 2022 to a second non-consecutive term. In 2002, he became the first elected Attorney General. He petitions on behalf of the People of Guam.

The OAG prosecuted Respondents in *People v. San Agustin*, No. CF0446-23 (Guam Super. Ct. July 3, 2023) until that court vicariously disqualified the **entire** OAG on July 1, 2024 on the basis of Guam law. (App. D at 41a). The Superior Court (hereinafter referred to interchangeably as the “**trial or lower court**”) predicated its subsequent dismissal with prejudice upon that disqualification. (App. E at 44a).

Thereafter, the OAG appealed the trial court’s dismissal, including the subsumed disqualification order, *see* (App. J at 84a), to the Supreme Court of Guam (hereinafter referred to interchangeably as “**the appellate court or Supreme Court**”), *see People v. San Agustin*, No. CRA24-023 (Guam 2026), until that court summarily disqualified the **entire** OAG on February 4, 2026 in deference to the trial court’s disqualification ruling. (App. A at 3a-4a).

Respondents are Arthur U. San Agustin, former Director of the Guam Department of Public Health and Social Services, and Masatomo Nadeau, the Chief Environmental Health Officer for the Guam Department of Public Health and Social Services. A grand jury indicted each on various charges of official misconduct, including tampering with records (San Agustin) and obstructing governmental functions (Nadeau), relating to their intentional dereliction of duty in ensuring compliant and authentic sanitary permits existed for elementary, middle, and high schools in Guam. (App. G at 51a) (App. H at 69a). The Respondents' actions and inactions placed children at risk.

The related proceedings are:

Attorney General of Guam v. Supreme Court of Guam, No. 1:26-cv-00007, 2026 WL ____ (D. Guam March 23, 2026) (Writ of Prohibition)

People of Guam v. San Agustin, et al., No. CF0446-23 (Guam Super. Ct. July 3, 2023)

People of Guam v. San Agustin, et al., No. CRA24-023 (Guam 2026)

People of Guam v. Ybanez, et al., No. CRA24-024, 2026 WL 163456 (Guam Jan. 15, 2026) (disqualification order cited as precedent in instant case)

People of Guam v. Ybanez, et al., No. 26-119, petition for cert. filed (U.S. July 27, 2026) (review of disqualification order cited as precedent in instant case).

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The Attorney General of Guam, Douglas B. Moylan, respectfully petitions on behalf of the People of Guam for a writ of certiorari to review a **final** order of the Supreme Court of Guam.

OPINIONS BELOW

On January 15, 2026, the Supreme Court granted Respondents' motion to dismiss finding the People had insufficiently briefed the issue of the trial court's dismissal with prejudice. (App. B at 6a). The court acknowledged that the People's brief suggested "reversal of the disqualification orders [of the Attorney General's Office] would, by implication, call the dismissal into question." (App. B at 8a). Despite admitting it had discretion to review forfeited issues, it declined to do so and instead dismissed this high-profile criminal appeal of public officials. (App. B at 8a-9a). It also declined to reach the underlying disqualification issues raised by Respondents. (App. B at 10a). The Clerk entered Judgment dismissing the appeal the same day. (App. C at 11a).

On January 29, 2026, Chief Justice Katherine A. Maraman extended the deadline to file a motion for rehearing until February 4, 2026 on application by the People.

On February 4, 2026, the Supreme Court summarily disqualified the **entire** OAG from representing the People of Guam in an authorized government criminal appeal. (App. A at 1a). It cited *People v. Ybanez*, No. CRA24-024, 2026 WL 163456 (Guam Jan. 15, 2026)¹, in which

1. Since then, a petition has been filed with this Court and briefing has been ordered. See *People v. Ybanez*, No. 26-119, petition for cert. filed (U.S. July 27, 2026).

it similarly disqualified the **entire** OAG on appeal. *See* (App. A at 4a); *see also* (App. J. at 84a). It deferred to the trial court’s disqualification ruling and forwent an independent *de novo* review of the merits of the trial court’s disqualification order before endorsing it. (App. A at 3a, 5a) (“Nothing in this Order adjudicates the merits of the Superior Court disqualification ruling . . .”).

It granted the “People” until February 12, 2026 (or eight (8) additional days) to file a motion for rehearing of the appellate dismissal on condition conflict-free substitute counsel do so. (App. A at 3a). It specifically ruled “[n]o further extension [would] be granted.” *Id.* Further, it forbade the OAG from submitting any further filings on behalf of the People. (App. A at 4a).

The February 4, 2026 order did not direct the OAG or any other party to secure the appointment of substitute counsel. To mitigate any harm to his client, the People of Guam, the Attorney General advertised the need for substitute counsel. Unfortunately, no attorney entered an appearance before (or after) the expiration of the February 12, 2026 rehearing deadline. Therefore, the appeal remains dismissed and the “People” were foreclosed from filing a motion for rehearing of the trial court’s dismissal of this high-profile public integrity prosecution because of the disqualification.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) and 48 U.S.C. § 1424-2.

The February 4, 2026 order constitutes a final order that implicates fundamental rights under the U.S. Constitution, as extended by the Organic Act. No further judicial labor appears to be contemplated by the Supreme Court of Guam. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 481 (1975).

On May 13, 2026, Justice Kagan extended the time to file a petition for a writ of certiorari up to and including July 4, 2026.

On July 4, 2026, the People filed an Emergency Application for Extension of Time due to the imminent strike of Super Typhoon Bavi on the island of Guam. On July 27, 2026, undersigned counsel received a letter from the Clerk of this Court via U.S.P.S. dated July 20, 2026 rejecting the timely e-filed and mailed submission pursuant to Rule 13.5.

The People have filed a Motion to Accept as Timely-Filed together with this appended Petition respectfully urging this Court to excuse the delay in filing as a result of a natural disaster that impacted Guam's infrastructure and telecommunications during the pivotal filing time span.

STATUTORY PROVISIONS INVOLVED

I. Laws of the United States of America

48 U.S.C. § 1421a mandates, in relevant part:

“Guam is hereby declared to be an unincorporated territory of the United States and the capital and seat of government thereof

shall be located at the city of Agana, Guam. The government of Guam shall have the powers set forth in this Act . . . The government of Guam shall consist of three branches, executive, legislative and judicial, and its relations with the Federal Government in all matters not the program responsibility of another Federal department or agency, shall be under the general administrative supervision of the Secretary of Interior.” *Id.* (emphasis supplied by counsel).

48 U.S.C. § 1421b(a) mandates, in relevant part:

“No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.” *Id.* (emphasis supplied by counsel).

48 U.S.C. § 1421b(u) mandates, in relevant part:

“The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that Territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of

section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

“All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.” *Id.*

48 U.S.C. § 1421g(d)(1) mandates, in relevant part:

“The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam. . . .” *Id.* (emphasis supplied by counsel).

48 U.S.C. § 1421g(d)(2) mandates, in relevant part:

“Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam by the qualified voters of Guam in general elections after 1998 in which the Governor of Guam is elected. The term of an elected Attorney General shall be 4 years. The Attorney General may be removed by the people of Guam according to the procedures specified in section 9-A of this Act or may be removed for cause in accordance with procedures established by the legislature in law.” *Id.* (emphasis supplied by counsel).

48 U.S.C. § 1422a(b) mandates, in relevant part:

“Any Governor . . . may be removed from office by a referendum election. . . . The referendum

election shall be initiated by the Legislature of Guam. . . .” *Id.*

48 U.S.C. § 1424(a)(1) mandates, in relevant part:

“The judicial authority of Guam shall be vested in a court established by Congress designated as the “District Court of Guam”, and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the “Supreme Court of Guam”, a trial court designated as the “Superior Court of Guam”, and such other lower local courts. . . . *Id.* (emphasis supplied by counsel).

48 U.S.C. § 1424-1(a)(2) mandates, in relevant part:

“The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

“(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam. . . .” *Id.*

48 U.S.C. § 1424-1(a)(6) mandates, in relevant part:

“The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

“(6) make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam. . . .” *Id.*

48 U.S.C. § 1424-1(a)(7) mandates, in relevant part:

“The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

“(7) govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.” *Id.*

II. Laws of the Territory of Guam

5 Guam Code Ann. § 30101(a) provides, in relevant part:

“The Office of the Attorney General of the government of Guam shall be administered by the Attorney General of Guam, who shall be elected by the people of Guam for a term of four (4) years.” *Id.*

5 Guam Code Ann. § 30101(c) provides, in relevant part:

“[The Attorney General] shall remain in office until the election and swearing in of a new

Attorney General, unless removed from Office as provided for in this Section . . .

“(c) The Attorney General of Guam may be removed in the same manner as provided under the Organic Act of Guam for the removal of [the Governor]. . . .” *Id.*

5 Guam Code Ann. § 30104 provides in relevant part:

“The Attorney General shall have cognizance of all matters pertaining to public prosecution, including the prosecution of any public officials.” *Id.*

5 Guam Code Ann. § 30109(a) provides, in relevant part:

“The Attorney General is the public prosecutor and, by himself, a deputy or assistant, shall: (a) conduct on behalf of the government of Guam the prosecution of all offenses against the laws of Guam which are prosecuted in any of the courts of Guam, the District Court of Guam, and any appeals therefrom . . .” *Id.* (emphasis supplied by counsel).

I.

INTRODUCTION

With all due respect, the Supreme Court of Guam’s decisions have deprived, and will continue to deprive, the People of their fundamental rights under the U.S.

Constitution, as extended by the Guam Organic Act. They also violate the separation of powers doctrine, *see* 48 U.S.C. § 1421a, by invading the Executive Branch’s exclusive power to argue criminal appeals on behalf of the public. This case presents a total procedural breakdown: If a trial court wrongly disqualifies an **entire** attorney general’s office empowered with exclusive public prosecution authority, and the appellate court then defers to that decision to summarily block the **entire** office in a prosecutorial appeal from that decision, the trial court’s dismissal order becomes entirely unreviewable. Notably, the court applied its recent summary disqualification ruling in *People v. Ybanez*, No. CRA24-024, 2026 WL 163456 (Guam Jan. 15, 2026) to this case. It will do so again in other similarly postured criminal appeals. Without this Court’s intervention, these erroneous rulings will likely repeat and the People’s rights will go unvindicated.

STATEMENT OF THE CASE

1. On or about July 3, 2023, the Superior Court of Guam Grand Jury indicted Respondent Arthur U. San Agustin, former Director of the Guam Department of Public Health and Social Services, with five (5) counts of Tampering with Public Records (3d Degree Felony), two (2) counts of Obstructing Governmental Functions, and one (1) count of Official Misconduct. It indicted Masatomo Nadeau, Chief Environmental Health Officer for the Guam Department of Public Health and Social Services, with two (2) counts of Official Misconduct and one (1) count of Obstructing Governmental Functions. Each count carried a special allegation of being a Crime against the Community. (App. H at 69a).

2. On or about August 21, 2024, the Superior Court of Guam Grand Jury returned a superseding indictment against Respondent Arthur U. San Agustin, former Director of the Guam Department of Public Health and Social Services, with fifteen (15) counts of Tampering with Public Records (3d Degree Felony), one (1) counts of Obstructing Governmental Functions, and one (1) count of Official Misconduct. It indicted Masatomo Nadeau, Chief Environmental Health Officer for the Guam Department of Public Health and Social Services, with one (1) count of Official Misconduct and one (1) count of Obstructing Governmental Functions. Each count carried a special allegation of being a Crime against the Community. (App. H at 69a).

3. On July 1, 2024, the trial court disqualified the **entire** OAG from representing the People finding that continued representation would violate the Guam Rules of Professional Conduct 1.7. It imputed a concurrent conflict of interest across the Office and disqualified the **entire** OAG. (App. D. at 40a). It then directed the OAG to appoint a special prosecutor within thirty days of the filing of the order or the matter would be dismissed. (App. D at 41a).

4. On October 18, 2024, the trial court cited the disqualification order as the sole basis for its dismissal with prejudice of the case. (App. E at 43a-44a).

5. On October 23, 2024, the OAG filed a timely and authorized² Notice of Appeal to the Supreme Court of

2. 8 Guam Code Ann. 130.20(a)(5) states that the government may appeal “[a]n order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy . . .” See *People v. Superior Court (Bruneman)*, 1998 Guam 24, ¶ 9, *People v. Pak*, 1998 Guam 27, ¶ 6; see also 8 Guam Code Ann. § 130.40.

Guam from the “October 18, 2024 Order for Dismissal entered in this matter, which dismissed this case with prejudice for lack of appointment of a special prosecutor after disqualification of the entire Office of the Attorney General as the People of Guam’s elected public prosecutor.” (App. I at 79a).

6. On January 15, 2026, the Supreme Court of Guam dismissed the appeal. (App. B at 6a). On that same date, the Clerk of the Supreme Court of Guam issued the Judgment dismissing the appeal. (App. C at 11a).

7. On January 28, 2026, the People filed a Motion for Extension of Time to File a Petition for Rehearing. On January 29, 2026, Chief Justice Katherine A. Maraman extended the deadline to file a motion for rehearing until February 4, 2026. Thereafter, all parties briefed the merits of the motion. *See* (App. A at 1a).

8. On February 4, 2026, the Supreme Court summarily disqualified the **entire** OAG from representing the People in the direct appeal in deference to the trial court’s³ disqualification order. (App. A at 4a). In doing so, it adopted the reasoning⁴ in *People v. Ybanez*, No. CRA24-

3. The Superior Court’s jurisdiction does not extend to appeals where the Supreme Court has exclusive jurisdiction. *See* 48 U.S.C. § 1424(a)(1); *see also* 7 Guam Code Ann. § 3105. Therefore, the Supreme Court, sitting in its appellate capacity, was not intractably bound by this order.

4. It states, in relevant part: “. . . we cannot simply ignore the Superior Court’s order and allow a disqualified office to continue as counsel . . . out of deference to the Superior Court’s disqualification order, we conclude that the OAG may not prosecute this appeal while that order remains in effect.” (App. J at 84a).

024, 2026 WL 163456 (Guam Jan. 15, 2026). (App. A at 4a). It warned that any further filings by the OAG on behalf of the People would be stricken. *Id.*

9. Notwithstanding its disqualification of the OAG, it granted the People until February 12, 2026 to file a motion for rehearing by “conflict-free substitute counsel.” (App. A at 1a). The order, however, does not direct anyone to appoint the “conflict-free substitute counsel.” (App. A at 1a).

10. On February 12, 2026 the OAG filed a Notice of Compliance with Order of February 4, 2026, noting that “[o]n February 6, 2026, the AG’s Office sent a mass electronic mailing to all Guam Bar members soliciting their appearance on behalf of the People of Guam in this case by the close of day on Monday, February 9, 2026. *See* Exhibit A. On February 20, 2026, it extended the response deadline to the close of day on February 11, 2026. *See* Exhibit B. To date, no Guam Bar members have contacted the AG’s Office to enter this appearance as conflict-free substitute counsel on behalf of the People of Guam in this case.” (App. H at 45a).

11. To date, the Supreme Court of Guam has not ruled on the Notice of Compliance or entered any further orders.

This petition follows.

REASONS FOR GRANTING THE PETITION

This Court's review is warranted for the following reasons:

The Supreme Court of Guam ("**Supreme Court**") summarily disqualified the **entire** Office of the Attorney General of Guam ("**OAG**") from representing the People of Guam on an appeal. The People were appealing the lower court dismissal with prejudice of a multiple-count indictment charging government officials with endangering the health of students attending public schools. The order did not provide for a lawful substitute. (App. A at 1a, 3a-4a).

That order ended further direct review by Guam's highest court. *See* 48 U.S.C. § 1424(a)(1); 48 U.S.C. § 1424-1(a)(2). It also infringed upon the fundamental and statutory rights guaranteed to the People of Guam under the U.S. Constitution, the Guam Organic Act, and local legislation.

The court's order rested on three sources of legal authority:

First, it adopted the reasoning of the lower court's vicarious disqualification of the **entire** OAG, which, in turn, based its decision on an alleged concurrent conflict of interest (Guam R. Prof'l Conduct 1.7) attributed to two former Assistant Attorney Generals. *See* (App. A at 3a-4a) and (App. D at 40a). The Supreme Court never reached the merits of the lower court ruling and did not conduct

an independent ethical review⁵ of the OAG’s actions below justifying the OAG’s removal on appeal.

Second, it cited as precedent an unreported order entered in *People v. Ybanez*, No. CRA24-024, 2026 WL 163456 (Guam Jan. 15, 2026), where it also disqualified the **entire** OAG from representing the People in an appeal from the trial court’s dismissal of criminal charges against public officials. (App. J at 84a). The *Ybanez* panel ultimately dismissed on this procedural ground. On July 27, 2026, this Court docketed the People’s petition for writ of certiorari in *Ybanez* and invited briefing. *See People v. Ybanez*, No. 26-119, petition for cert. filed (U.S. July 27, 2026).

Third, it cited 48 U.S.C. § 1424-1(a)(6). (App. A at 1a). That provision was also the sole source of authority cited in the disqualification of the **entire** OAG in *Ybanez*. (App. J at 88a). The ***Ybanez* Rule** holds that a lower court ruling disqualifying the entire OAG prohibits the OAG from representing the People on appeal.

I. The Supreme Court Did Not Provide Adequate and Effective Notice of the Disqualification Order to the People as Required by the Fourteenth Amendment to the U.S. Constitution, as Extended by the Organic Act

The order did not provide the “People” with adequate and effective constitutional notice that the disqualification of the **entire** OAG required them to secure substitute

5. 48 U.S.C. § 1424-1(a)(7) authorizes the court to regulate the conduct of attorneys in territorial courts. (“The Supreme Court of Guam shall . . . govern attorney and judicial ethics . . . including . . . the conduct and discipline of persons admitted to practice law.”).

counsel to avoid missing the hard deadline to file a motion for rehearing from the dismissal of their criminal appeal. The concept of “the People” is a legal construct endowed with fundamental rights under the U.S. Constitution. The U.S. Congress established the office of the Attorney General and designated that office as the “Chief Legal Officer of the Government of Guam.” *See* 48 U.S.C. § 1421g(d)(1). Guam grants the Attorney General **exclusive** public prosecution authority. *See* 5 Guam Code Ann. §§ 30104 and 30109(a). Therefore, the legal unavailability of substitute counsel⁶ extinguished the “People’s” statutory right to direct review in Guam’s court of last resort involving territorial prosecutions.

The “People of Guam,” on whose behalf the Attorney General prosecutes, is an artificial entity (in contrast to a natural person) which can **only** act through their democratically-elected Attorney General. *See* 48 U.S.C. § 1421g(d)(1); *see also* *See* 5 Guam Code Ann. §§ 30104 and 30109(a). They are unqualifiedly the most important political entity in Guam. *See* 4 Guam Code Ann. § 400 (vested with ultimate “political authority.”). In recognition of that power, the Guam Legislature enacts laws on behalf of the People of Guam. *See* 2 Guam Code Ann. § 2101.

The due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution are directly extended to Guam through 48 U.S.C. § 1421b(u).

6. The Attorney General does not concede that he could have been disqualified and replaced under these circumstances because of the U.S. Congress’s intentional statutory design in establishing his independent elective position. *See* 48 USC § 1421g(d)(1).

See U.S. Const. amend XIV § 1⁷. The U.S. Constitution applies to all U.S. states and incorporated territories. *See* U.S. Const. art. VI; *see also Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (“The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply.”). Accordingly, constitutional notice required service on their agent and, where as in this case, that legal representative had been disqualified, failure to provide for replacement counsel constituted a due process violation. The failure to do so forfeited the People’s ability to file a timely motion for rehearing to reconsider the dismissal of their appeal.

The order at bar infringed the People’s due process rights when it failed to provide for the appointment of a lawful substitute counsel. The court disqualified the only agency empowered to prosecute criminal offenses and then failed to give such notice to the “People,” a term this Court has defined as encompassing “all members of the political community, not an unspecified subset.” *See District of Columbia v. Heller*, 554 U.S. 570, 580 (2008); *see also* Nathaniel Persily & Josh Douglas, *The Meaning(s) of “the People” in the Constitution*, 126 Harv. L. Rev. 1072, 1990 (2013) (due process and equal protection clauses refer to “person”). The People have a vested interest in the prosecution of corrupt public officials.

7. “No state shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Resolution of the question presented will necessarily define the phrase, “the People,” and clarify the legal significance of that fictitious, but preeminently vital, body politic as it relates to the criminal prosecution of public officials. While criminal defendants enjoy a wide array of rights under the federal constitution, the public are many times an afterthought in the context of asserting particularized constitutional rights.

II. The Order at Bar Deprived the People of Guam of Statutory Right to Appeal Under the Fourteenth Amendment to the U.S. Constitution, as Extended by the Organic Act, and 48 U.S.C. § 1421b(a)

The order at bar deprived the People’s statutory right to appeal the lower court’s dismissal with prejudice in violation of the due process and equal protection clauses of the U.S. Constitution, as extended by the Organic Act. *See* U.S. Const. amend XIV § 1; *see also* 48 U.S.C. § 1421b(u). Where a statute “. . . grants [the constitutional right to appellate review], it becomes a matter of federal concern under the equal protection clause of the Fourteenth Amendment, requiring uniformity of opportunity to appeal. [U.S. Supreme Court decisions omitted].” *Sierra Melendez v. Rivera Brenes*, 331 F. Supp. 898, 900-901 (D. Puerto Rico 1971).

It also violated the People’s rights under 48 U.S.C. § 1421b(a) (right “to petition the government for a redress of grievances.”). This provision substantially tracks the language in the First Amendment to the U.S. Constitution. *Compare* U.S. Const. amend. I. In *Guam v. Guerrero*, the Ninth Circuit held that § 1421b(a) must be interpreted in the same manner as the First Amendment. *Guam v.*

Guerrero, 290 F.3d 1210, 1218 (9th Cir. 2002); *Accord Law Offices of Phillips & Bordallo, P.C. v. Guerrero*, No. 1:22-cv-00020, 2023 WL 5075374, *8 (D. Guam Aug. 9, 2023) (*Guam v. Guerrero*: “Guam courts could not interpret Guam’s Bill of Rights differently from how the U.S. Supreme Court interprets its corresponding Constitutional rights.”). The *Ybanez* Rule is an “enacted” law because the court acted outside the scope of its procedural rule-making authority under § 1424-1(a)(6) and it is now binding substantive law. Enacting laws is the exclusive province of the Legislature of Guam.

The People appealed pursuant to 8 Guam Code Ann. §§ 130.20(a)(5) and 130.40. These territorial statutes must be interpreted consistent with the due process and the equal protection clauses of the Fourteenth Amendment. *See Guam v. Guerrero*, 290 F.3d 1210, 1217-1218 (9th Cir. 2002) (“[A] territorial court lacks the authority to interpret a federal statute or federal constitutional provision contrary to the interpretation the U.S. Supreme Court has given it.”).

This Court has unequivocally held that all courts must construe the provisions of the Organic Act as intended by Congress. *See Limtiaco v. Camacho*, 549 U.S. 483, 491-92 (2007) (“ . . . the Organic Act is a federal act, which we are bound to construe according to its terms.”); *See, e.g., Territory of Guam v. Olsen*, 431 U.S. 195, 201 (1977) (“ . . . we should be reluctant without a clear signal from Congress to conclude that it intended to allow the Guam Legislature to foreclose appellate review by Art. III courts, including this Court, of decisions of territorial courts in cases that may turn on questions of federal law.”);

Accord 48 U.S.C. § 1423i (“ . . . All laws enacted by the legislature shall be reported by the Governor to the head of the [U.S. Department of the Interior]. The Congress of the United States reserves the power and authority to annul the same.”).

III. Scope of the Supreme Court of Guam’s Broad, Undefined, and Vague Procedural Rule-Making Authority Under 48 U.S.C. § 1424-1(a)(6) Has Never Been Interpreted and its Application Here Resulted in Constitutional Error

This issue is one of first impression. No federal court has ever interpreted the constitutionality of using a judicial rule-making grant under 48 U.S.C. § 1424-1(a)(6) or an analogous provision to disqualify an entire prosecutors’ office. This federal statute grants the Supreme Court a broad, undefined, and vague mandate to make rules governing “the practice and **procedure** in the courts of the judicial branch of Guam.” *Id.* (emphasis supplied by counsel). The court cites this sub-section frequently to support its decisions. This case offers the Court an opportunity to clarify its limits.

The order at bar cites to the statute and the *Ybanez* ruling as the legal authority for the disqualification. The court cited to sub-section (6) instead of 48 U.S.C. § 1424-1(a)(7), which governs “attorney and judicial ethics and the practice of law in Guam.” This is significant because it did not find that the OAG violated any ethical rules on appeal.

The court acted outside the scope of its authority. Section 1424-1(a)(6) limits the court to making and

promulgating rules on matters of **procedure** only.⁸ The sole legal authority for the *Ybanez* Rule was this subsection. (App. J at 84a). The *Ybanez* Rule impermissibly abridged, enlarged, and modified a substantive right. For example, it abridged the People’s constitutional right to pursue their statutory appellate rights. *See Sibbach v. Wilson & Co., Inc.*, 312 U.S. 1, 9-10 (1941); *See generally* 28 U.S.C. § 2072(b) (Guam applies this U.S. Supreme Court standard).

IV. The Supreme Court Forwent Applying its Own Disqualification Standards When It Disqualified the OAG

The Supreme Court did not adhere to its own standards on the disqualification of counsel. *See Barrett-Anderson v. Camacho*, 2018 Guam 20 (general disqualification standard); *see also In Re: Request of Leon Guerrero*, No. CRQ24-001, 2024 WL 5264695 (Guam May 31, 2024) (examines Attorney General’s dual roles as Chief Legal Officer of the Government of Guam and Public Prosecutor). Instead, it created the *Ybanez* Rule on the basis of a “procedural” rule enacted under 48 U.S.C. § 1424-1(a)(6).

A fair interpretation of the order at bar is that the court either applied no standard or it expanded the scope of Section 1424-1(a)(6) beyond Congress’s intention. The court’s use of that sub-section is the functional equivalent of an enacted law, but instead of being passed by the

8. The Supreme Court of Guam is exempt from the territorial Administrative Adjudication Law. *See* Guam Administrative Adjudication Law (5 Guam Code Ann. § 9200, *et seq.*).

elected members of the Legislature of Guam, it was created by the judiciary. The resulting *Ybanez* Rule portends an alarming development that will escape constitutional review unless this Court grants the Petition.

The Supreme Court did not follow its disqualification standard for government attorneys. “If a court finds that an actual conflict exists, it should determine whether that conflict should be imputed to the entire Office of the Attorney General.” *In Re: Request of Leon Guerrero*, 2024 WL 5264695, *16. “But the conflict of one assistant attorney general is less likely to be imputed to the entire Office of the Attorney General.” *Id.* “Thus, only in extraordinary circumstances—such as where a conflicted assistant attorney general remains unscreened and continues to participate in or discuss the matters where they have a conflict—is disqualification of the entire office necessary.” *In Re: Request of Leon Guerrero*, 2024 WL 5264695, *17.

As a practical matter, the same concerns about protecting a litigant at trial do not exist on appeal where the record constitutes the whole universe of information that may be considered by the appellate tribunal.

a. The Order at Bar Violates the Organic Act’s Separation of Powers Provision

48 U.S.C. § 1421a provides that “. . . [t]he government of Guam shall consist of three branches, executive, legislative and judicial. . . .” The order at bar violates this provision because it eliminates the independent prosecutorial discretion of the Attorney General. “The doctrine of separation of powers requires judicial respect

for the independence of the prosecutor.” *United States v. Simpson*, 927 F.2d 1088, 1091 (9th Cir. 1991). “We run an even greater risk of offending separation-of-powers principles when disqualifying an entire office of Executive branch attorneys. Such sweeping interference is seldom warranted. Indeed, every circuit court that has reviewed an officewide disqualification has reversed.” *United States v. Williams*, 68 F.4th 564, 572 (9th Cir. 2023). The Supreme Court of Guam does not appear to have considered the implications of the separation of powers doctrine.

b. Disqualification of an Entire Prosecutorial Office is a Drastic Measure Seldom Upheld

“[T]he disqualification of Government counsel is a drastic measure[,] [and] disqualifying an entire United States Attorney’s office is almost always reversible error.” *See United States v. Bolden*, 353 F.3d 870, 875-876 (10th Cir. 2003); *see also Bullock v. Carver*, 910 F. Supp. 551, 559 (D. Utah 1995). “Every circuit court that has considered the disqualification of an entire United States Attorney’s office has reversed the disqualification.” *United States v. Bolden*, 353 F.3d at 879 (10th Cir. 2003) (citations omitted). In fact, the trial court here agreed with that observation. *See* (App. D at 28a) (“[D]isqualification is a drastic course of action that should not be taken simply out of hypersensitivity to ethical nuances or the appearance of impropriety.” [*Barrett-Anderson v. Camacho*, 2018 Guam 20] ¶ 17.”). Yet, it has already happened twice⁹ in Guam (pop. 170,000 est.) in 2026 involving appeals from the dismissal of charges against Government of Guam officials and employees.

9. The case at bar, through the application of the *Ybanez* Rule.

If the alleged ethical infirmity analyzed in the trial court's order existed on appeal, the Supreme Court should not have considered the OAG briefs at all in dismissing the appeal. (App. B at 6a). This strongly suggests that the disqualification of the OAG on appeal was rooted in an administrative "procedural" rule with no guardrails instead of actual disqualification standards. The Supreme Court's arbitrary exercise of its power to make rules deprived the People of their due process and equal protection rights to prosecute their appeal.

c. Practical Effect of Disqualifying Entire OAG was Unlawful Removal

The order on review is in derogation of the Organic Act because it had the same practical effect of removing the Attorney General. Only the People and the Legislature may remove the Attorney General of Guam. 48 U.S.C. § 1421g(d)(2) dictates "[t]he Attorney General may be removed **by the people of Guam** according to the procedures specified in section 9-A of this Act or may be removed for cause **in accordance with procedures established by the legislature in law.**" *Id.* (emphasis supplied by counsel). No other provision in the Organic Act expressly authorizes the judiciary to remove the Attorney General.

Guam territorial law provides a procedure for removal. In accordance with the specific authority granted by 48 U.S.C. § 1421g(d)(2), the Legislature of Guam enacted 5 Guam Code Ann. § 30101(c) which mandates that "[t]he Attorney General of Guam may be removed in the same manner as provided under the Guam Organic Act for the removal of [the Governor]. . . ." *Id.* 48 U.S.C. § 1422a(b)

provides, in relevant part that the Governor “may be removed from office by a referendum election . . . ,” and that process must be initiated by the Legislature. *Id.*

Because the Organic Act vests exclusive prosecuting authority in the Attorney General, the Guam judiciary has functionally rewritten a federal statute by removing him and demanding a special prosecutor substitute him.

V. The Question Presented Will Evade Federal Review Unless the Court Grants the Petition

The question presented will evade constitutional review if this Court does not grant the Petition:

First, the People have exhausted all territorial review options. The District Court of Guam’s jurisdiction does not provide for the direct appellate review of decisions rendered by the Supreme Court of Guam. *See Santos v. Superior Court of Guam*, No. 15-16854, 2018 WL 847720 (9th Cir. Feb. 14, 2018) (mem.).

Second, the OAG’s writ of prohibition action pending in the District Court of Guam faces a high bar that may ultimately prove insurmountable. *See Attorney General of Guam v. Supreme Court of Guam*, No. 1:26-cv-00007, 2026 WL _____ (D. Guam March 23, 2026). The OAG filed this objectively reasonable extraordinary action to vindicate the People’s rights under the U.S. Constitution and the Organic Act’s Bill of Rights. *See, generally Agana Bay Dev. Co. (Hong Kong) v. Supreme Court of Guam*, No. 74-177 (D. Guam Sept. 25, 1974) (for form, writ of prohibition issued to the Supreme Court of Guam).

Third, this Court offers the best opportunity to review the constitutionality of the disqualification order. However, according to this Court’s own website, it only grants and hears approximately 80 cases from 7,000-8,000 petitions for writ of certiorari submitted each term. *See* Supreme Court of the United States, *FAQs—General Information*, https://www.supremecourt.gov/about/faq_general.aspx#:~:text=%C2%A0How%20many%20cases%20are%20appealed%20to%20the%20Court%20each%20year%20and%20how%20many%20cases%20does%20the%20Court%20hear%3F (accessed on August 8, 2026).

VI. Resolution of the Question Presented Will Impact a Prosecutorial System Common to 49 States and Five Territories

The Supreme Court disenfranchised the voting public when it removed their elected public prosecutor and then neglected to address how a substitute would qualify or be appointed under existing local law, the Organic Act, and the U.S. Constitution.

Attorney Generals possess common law and enumerated powers, allowing for criminal prosecutions with a significant degree of autonomy. *See State of Florida ex. rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-269 (5th Cir. 1976), *cert. den.*, *Standard Oil Co. v. Florida*, 429 U.S. 829, 97 S. Ct. 88, 50 L.Ed.2d 92 (1976);¹⁰ *See also*

10. “Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. [citation omitted]. . . . [H]e typically may exercise all such authority as the public interest requires. [citation omitted]. And the attorney general has wide discretion in making the determination as to the public interest. [citation omitted].”

A.B. Won Pat Guam Int'l Airport Auth. ex rel. Bd. of Dirs. v. Moylan, 2005 Guam 5 ¶ 2 (The Attorney General has common law powers that “may be subject to increase, alteration or abridgement by the Guam Legislature.”). An attorney general elected by the People enjoys broader discretion still. *See State ex rel. Shevin v. Yarborough*, 257 So.2d 891, 895 (Fla. 1972) (Ervin, J., concurring).¹¹

The resolution of the question presented would apply to all jurisdictions. It would particularly impact three states and five territories that designate their Attorney General as the primary or sole prosecutor. *See* Bureau of Justice Statistics (May 2020). *Jurisdiction of State Attorneys General Offices over White-Collar Crime, 2014*. U.S. Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/jsagowcc14.pdf>. (“Of the 46 [states] responding to questions about jurisdiction, 42 reported having original or shared criminal jurisdiction with local prosecutors over white-collar crime [including public corruption] in 2014.”).

Resolution of the question presented would impact the administration of justice in all jurisdictions but

11. “The Attorney General is elected by the people; he is entrusted by them with the common law power to legally represent them or some of them in matters deemed by him to affect the public interest . . . Regardless of the effectiveness of his efforts in particular public legal situations, at least the people have the continuing satisfaction of knowing that their elected Attorney General has the right to exercise his conscientious official discretion to enter into those legal matters deemed by him to involve the public interest, even though not expressly authorized by statute.”

particularly those with an elected prosecutor who has exclusive public prosecution authority. The demographics show a wide applicability: *First*, the Attorney General’s public prosecution authority mirrors the constitutional and legislative schemes in 49 states and four other territories¹². The Connecticut Attorney General only handles civil matters. *Second*, like Guam, Alaska, Delaware, Rhode Island, and four other territories grant the Attorney General (or equivalent official position) **exclusive** public prosecution authority. *See, e.g.*, Alaska Stat. § 44.23.020(b)(3); 29 Del. C. § 2504(c); R.I. Gen. Laws § 42-9-4; Am. Sam. Code Ann. 46.1220; Guam Organic Act, 48 U.S.C. § 1421g(d)(1), 5 Guam Code Ann. § 30104; P.R. Const. art. IV, § 5, 3 L.P.R.A. § 295 (2024); NMI Const. art. III, § 11; 3 V.I.C. § 114. *Third*, just as in Guam, Attorney Generals are elected in 43 U.S. states, the District of Columbia, and the Northern Marianas Islands. *See, e.g.* 5 Guam Code Ann. § 30101(a).¹³

Accordingly, the People respectfully request that this Court grant the Petition.

12. American Samoa, Puerto Rico, Northern Marianas Islands, and U.S. Virgin Islands.

13. Governors appoint attorney generals (or equivalent official position) in Alaska, Hawaii, New Hampshire, New Jersey, Wyoming, American Samoa, Puerto Rico, and the U.S. Virgin Islands. The Maine Legislature appoints its Attorney General. Lastly, the Tennessee Supreme Court appoints that state’s Attorney General.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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**APPENDIX A — ORDER OF THE SUPREME
COURT OF GUAM, FILED FEBRUARY 4, 2026**

IN THE SUPREME COURT OF GUAM

Supreme Court Case No. CRA24-023
Superior Court Case No. CF0446-23

PEOPLE OF GUAM,

Plaintiff-Appellant,

vs.

ARTHUR U. SAN AGUSTIN AND
MASATOMO NADEAU,

Defendants-Appellees.

ORDER

This matter comes before the court upon the Motion for Extension of Time to File a Petition for Rehearing filed on behalf of Plaintiff-Appellant People of Guam (“People”) by the Office of the Attorney General (“OAG”) on January 28, 2026. The OAG requested a 30-day extension of time to “consider, consult with legal constitutional experts, research, and brief the novel issues” it claims arise from this court’s dismissal order. Mot at 2 (Jan. 28, 2026). The motion referred to potential Organic Act questions, the court’s authority to compel appointment of substitute counsel, and related structural issues. *Id.* at 2-5. This

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court granted the application to shorten time and set shortened response and reply deadlines. Order at 1-2 (Jan. 29, 2026). The parties filed responses and replies as scheduled. San Agustin’s Opp’n to Mot. (Feb. 2, 2026); Nadeau’s Opp’n to Mot. (Feb. 2, 2026); OAG’s Reply to San Agustin’s Opp’n (Feb. 3, 2026); OAG’s Reply to Nadeau’s Opp’n (Feb. 3, 2026). San Agustin also filed a Second Motion to Disqualify the OAG in this appeal. San Agustin’s Second Mot. Disqual. OAG (Feb. 2, 2026).

Guam Rule of Appellate Procedure (“GRAP”) 30(a)(1) provides that “[u]nless the time is shortened or extended by order or local rule, a petition for rehearing may be filed within fourteen (14) days after entry of judgment.” GRAP 30(a)(2) further requires that a petition for rehearing “state with particularity each point of law or fact which the petitioner contends the court has overlooked or misapprehended” and provides that “[a]n issue not previously briefed by the parties cannot be raised for the first time in a petition for rehearing.” Guam R. App. P. 30(a)(2). This court also has authority to regulate practice and enforce compliance with its rules and orders, including by striking noncompliant filings. Guam R. App. P. 27(a), 32; *see* 48 U.S.C.A. § 1424-1(a)(6); 7 GCA § 3 108(c)(2).

1. The People’s Time to File a Petition for Rehearing is Extended to February 12, 2026, and the Request for a 30-Day Extension to March 3, 2026, is Denied

The OAG requested a 30-day enlargement to file a petition for rehearing and stated that additional time was needed “to consider, consult with legal constitutional

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experts, research, and brief the novel issues arising directly from the Court’s decision.” Mot at 2. Having reviewed the parties’ submissions and considering the procedural posture of this appeal—including that the appeal has already been dismissed by judgment entered January 15, 2026—the court **DENIES** the People’s request for a 30-day extension to March 3, 2026. The court nevertheless finds it appropriate, in the exercise of its discretion under GRAP 30, to allow a short additional period beyond the February 4, 2026, deadline previously set by the court. *See* Order at 1-2 (Jan. 29, 2026).

Accordingly, the court **EXTENDS** the People’s time to file any petition for rehearing to **Thursday, February 12, 2026**. No further extension will be granted.

2. Any Future Filings Must Be Made By Conflict-Free Substitute Counsel

The Superior Court entered an order disqualifying the OAG in CF0446-23, and no stay of that order has been entered by the Superior Court or this court. Record on Appeal (“RA”), tab 230 at 1 (Dec. & Order (Mots. Disqualify, July 1, 2024)). The trial court ordered the appointment of a special prosecutor within 30 days, otherwise the case would be dismissed. *Id.* at 22-23. Subsequently, the Superior Court dismissed the case with prejudice due to the failure to appoint a special prosecutor. RA, tab 242 at 1-2 (Order Dismiss., Oct. 18, 2024) (“The People remain unrepresented as [AG] Douglas Moylan has been disqualified and no special prosecutor has been appointed . . .”).

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In materially identical circumstances, this court has concluded that, where an unstayed Superior Court disqualification order remains in effect, “we cannot simply ignore the Superior Court’s order and allow a disqualified office to continue as counsel of record in this court.” *People v. Ybanez*, CRA2024-024 (Order at 3-4 (Jan. 15, 2026)). This court further concluded that, “out of deference to the Superior Court’s disqualification order, we conclude that the OAG may not prosecute this appeal while that order remains in effect.” *Id.*

Consistent with that rationale and this court’s inherent authority to regulate practice and enforce compliance with its orders, this court **PROSPECTIVELY CONDITIONS** any further proceedings related to this appeal on the appearance of conflict-free substitute counsel. Any petition for rehearing due February 12, 2026, and any other filings on behalf of the People, must be filed by conflict-free counsel not subject to the Superior Court’s disqualification order.

If a petition for rehearing or any other filing is submitted by the OAG while the Superior Court’s disqualification order remains in effect, this court will strike the filing and will not entertain further filings from disqualified counsel. *See* Guam R. App. P. 27(a), 32; *see also* 48 22 U.S.C.A. § 1424-1(a)(6); 7 GCA § 3108(c)(2).

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3. San Agustin’s Second Motion to Disqualify the OAG is Denied as Moot for Purposes of this Docket and in Light of the Prospective Requirement

Because this appeal has already been dismissed by judgment entered, and because this Order prospectively requires conflict-free counsel for any further filings, the court **DENIES** San Agustin’s Second Motion to Disqualify the OAG as moot without prejudice for purposes of this dismissed appeal. Nothing in this Order adjudicates the merits of the Superior Court disqualification ruling, which is presumed valid absent a stay and must be given effect.

Without addressing the merits of any alleged misconduct, this court **REFERS** the record of post-judgment motion practice in this appeal to the Office of Regulation Counsel for such review and action as that office deems appropriate.

SO ORDERED this 4th day of February, 2026.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice

**APPENDIX B — ORDER OF THE SUPREME
COURT OF GUAM, FILED JANUARY 15, 2026**

IN THE SUPREME COURT OF GUAM

Supreme Court Case No. CRA24-023
Superior Court Case No. CF0446-23

PEOPLE OF GUAM,

Plaintiff-Appellant,

vs.

ARTHUR U. SAN AGUSTIN AND
MASATOMO NADEAU,

Defendants-Appellees.

ORDER

This matter comes before the court upon the Motion to Dismiss this appeal, or in the alternative, to disqualify the Office of the Attorney General (“OAG”), filed by Defendants-Appellees Arthur U. San Agustin and Masatomo Nadeau, and the Opposition filed by Plaintiff-Appellant People of Guam (“People”). *See* San Agustin’s Mot. Dismiss, Mot. Disqual. OAG at 1-9 (July 18, 2025); Nadeau’s Joinder in San Agustin’s Mot. Dismiss, Mot. Disqual. OAG at 1-3 (July 30, 2025); People’s Mem. Resp. Mot. Dismiss, Mot. Disqual. OAG at 1-17 (Aug. 14, 2025).

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The People appeal from the Superior Court’s order dismissing the case with prejudice following the OAG’s failure to appoint a special prosecutor within the time ordered by the court. This court extended the deadline for the People’s opening brief to March 10, 2025. Order at 1 (Feb. 25, 2025). After granting the People’s Emergency Motion for Leave to File an Untimely Brief and sanctioning them by deducting ten minutes from oral argument, this court accepted the late-filed opening brief. Order at 1-2 (Apr. 7, 2025). In that brief, the People challenged *only* the Superior Court’s disqualification orders and did not substantively address the dismissal with prejudice. *See* Appellant’s Br. at 18-54 (Apr. 7, 2025). San Agustin and Nadeau then filed their response briefs, arguing in part that the People failed to brief any challenge to the dismissal. *See* Appellee San Agustin’s Br. at 38 (June 6, 2025); Appellee Nadeau’s Br. at 3 (June 20, 2025). The People submitted their reply brief, *again* omitting any argument challenging the dismissal while focusing solely on the disqualification issue. Appellant’s Reply Br. at 1-15 (July 8, 2025).

San Agustin and Nadeau thereafter moved to dismiss the appeal, or in the alternative, to disqualify the OAG from further participation. *See* Mot. Dismiss at 1-9; Joinder in Mot. Dismiss at 1-3. In response to these motions, the People, for the first time in this appeal, argued that “[t]he trial court erred when it dismissed the case with prejudice” and requested leave to file a supplemental brief addressing that issue. People’s Mem. Resp. Mot. Dismiss at 3-5. In light of the pending motions, this court vacated the scheduled oral argument. Order at 1 (July 31, 2025).

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Under Guam Rule of Appellate Procedure (“GRAP”) 13(a)(9), an appellant’s opening brief must contain “the contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies.” Failure to raise an issue and present supporting argument in the opening brief generally results in forfeiture of that issue on appeal, though this court retains discretion to review forfeited issues in appropriate circumstances. *See People v. Quinata*, 2023 Guam 25 ¶ 32 (citing *People v. Borja*, 2017 Guam 20 ¶ 28; *Estate of Concepcion v. Siguenza*, 2003 Guam 12 ¶¶ 10-11). Forfeiture arises from neglect or inadvertence, while waiver is the intentional relinquishment of a known right; waived issues will not be considered, but forfeited issues may be reviewed at the court’s discretion. *Id.* ¶ 32 n.4. This court has also emphasized that to allow a party “to present new argument for the first time” outside the opening brief—whether in a reply brief or in a later motion would be “manifestly unfair.” *Concepcion*, 2003 Guam 12 ¶ 11.

Here, the Superior Court’s dismissal with prejudice is the final judgment from which this appeal is taken under 8 GCA § 130.20(a)(5). Yet the People’s opening brief contains no stand-alone contention that the dismissal was erroneous on statutory, procedural, or speedy-trial grounds. *See* Appellant’s Br. at 18-54. Instead, the brief challenges only the disqualification of the OAG and suggests that reversal of the disqualification orders would, by implication, call the dismissal into question. *Id.* After San Agustin and Nadeau specifically flagged the omission in their response briefs, the People’s reply brief again did not present any independent argument that the dismissal

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constituted an abuse of discretion or otherwise violated Guam's speedy-trial statutes. *See* Appellee San Agustin's Br. at 38-39; Appellee Nadeau's Br. at 3; Reply Br. at 1-15.

Only in their memorandum opposing the motions to dismiss and disqualify did the People first articulate a substantive challenge to the dismissal with prejudice and request leave to supplement their briefing. People's Mem. Resp. Mot. Dismiss at 3-5. That late-raised argument does not cure the failure to comply with GRAP 13(a) (9). *See Concepcion*, 2003 Guam 12 ¶ 11. The obligation to present contentions and reasons in the opening brief is not a mere formality; it is a prerequisite to appellate review. *See Quinata*, 2023 Guam 25 ¶ 32 n.4; *Concepcion*, 2003 Guam 12 ¶¶ 9-11. Where, as here, an appellant omits any developed argument challenging the judgment from which it appeals and then fails to correct that omission in the reply brief, the issue is forfeited, and this court may decline to exercise its discretion to revive it through a later motion.

Because the People have not properly briefed any challenge to the dismissal with prejudice, there is no basis on which this court may disturb that judgment on appeal. Having considered the motion, joinder, opposition, the record on appeal, and the applicable law, we conclude that the People failed to adequately brief any challenge to the Superior Court's dismissal order and that dismissal of this appeal is warranted.

The motion to dismiss is **GRANTED**, and this appeal is **DISMISSED**. Because we resolve the matter on that basis,

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we do not reach San Agustin and Nadeau’s alternative request to disqualify the OAG or otherwise address the underlying disqualification issues. The People’s request for supplemental briefing is moot.

SO ORDERED this 15th day of January 2026.

_____/s/
F. PHILIP CARBULLIDO

Associate Justice

_____/s/
**KATHERINE A.
MARAMAN**

Associate Justice

_____/s/
ROBERT J. TORRES
Chief Justice

**APPENDIX C — JUDGMENT OF THE SUPREME
COURT OF GUAM, FILED JANUARY 15, 2026**

IN THE SUPREME COURT OF GUAM

Supreme Court Case No. CRA24-023
Superior Court Case No. CF0446-23

PEOPLE OF GUAM,

Plaintiff-Appellant,

vs.

ARTHUR U. SAN AGUSTIN AND
MASATOMO NADEAU,

Defendants-Appellees.

JUDGMENT

APPEAL from the Superior Court of Guam.

ON CONSIDERATION THEREOF, it is now hereby ordered and adjudged by this court that the court **GRANTS** the motion to dismiss and **DISMISSES** this appeal. Because the court resolves the matter on that basis, the court did not reach Defendants-Appellees Arthur U. San Agustin and Masatomo Nadeau's alternative request to disqualify the Office of the Attorney General or otherwise address the underlying disqualification issues. Plaintiff-Appellant People of Guam's request for supplemental briefing is moot.

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Dated this 15th day of January, 2026.

/s/

HANNAH G. ARROYO
Clerk of Court

**APPENDIX D — DECISION AND ORDER
OF THE SUPERIOR COURT OF GUAM,
FILED JULY 1, 2024**

IN THE SUPERIOR COURT OF GUAM

Case No. CF0446-23

THE PEOPLE OF GUAM,

vs.

ARTHUR U. SAN AGUSTIN, *et al*,

Defendant.

**DECISION AND ORDER
(Motions to Disqualify)**

INTRODUCTION

This matter came before the Honorable John C. Terlaje on several dates from March 12-13, 15, and 18, 2024 and April 8, 2024, for an evidentiary hearing on Arthur San Augustin’s (“Defendant San Augustin’s”) Motion to Disqualify the Office of the Attorney General (Sept. 1, 2023) and Masatomo Nadeau’s (“Defendant Nadeau’s”) Motion to Disqualify the Office of the Attorney General and Joinder in San Augustin’s Motion (Sept. 1, 2023). Deputy Attorney General Michael Tennyson (“Tennyson”) and Assistant Attorney General Lewis Harley (“Harley”) appeared on behalf of the People, while Attorney General Douglas Moylan (“Moylan”) was disqualified

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from representing the People given his dual role as an advocate and witness.¹ Joaquin Arriola (“J. Arriola”) and William B. Brennan (“Brennan”) appeared for Defendant San Agustin and G. Patrick Civile (“Civille”) appeared for Defendant Nadeau. Based on the relevant law and authorities the Court now issues the following decision and order **GRANTING** Defendants’ Motions to Disqualify the Office of the Attorney General.

BACKGROUND

On August 21, 2023, the Office of the Attorney General indicted Defendant San Augustin and Defendant Nadeau with five charges: (1) Tampering with Public Records, (2) Obstructing Government Functions, (3) Official Misconduct, (4) Obstructing Governmental Functions, and (5) Official Misconduct. Super. Indictment (Aug. 21, 2023). These charges were all brought regarding both Defendants roles in the Department of Public Health and Social Services (“DPHSS”). It is alleged that Defendant San Agustin, formally the Director of Guam DPHSS, renewed sanitary permits for several public schools without proper inspection; it is further alleged that Defendant Nadeau, as the Chief Environmental Public Health Officer of the Guam DPHSS, Division of Environmental Health, aided in this misconduct at the expense of public health. [Prop.] Findings of Facts & Conclusions of Law re: Mot. to Disqualify Off. of Att’y Gen. (Apr. 1, 2024).

1. *See* Dec. & Order, CF0446-23 (Mar. 29, 2024) (disqualifying Moylan under CRPC 3.7).

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On September 1, 2023, Defendant San Augustin filed a Motion to Disqualify the Office of the Attorney General. Mot. to Disqualify Off. Of Att’y Gen. (Sept. 1, 2023). On the same day, Defendant Nadeau also filed a Motion to Disqualify the Office of the Attorney General and Joinder in San Augustin’s Motion. Def. Nadeau’s Mot. to Disqualify Off. Of Att’y Gen. and Joinder in San Augustin’s Mot. to Disqualify Off. of Att’y Gen. (Sept. 1, 2023). Defendants argue that the OAG has a disqualifying conflict of interest in this case because the criminal division of the OAG was prosecuting the Defendants while the civil division of the OAG was simultaneously advising them as clients.

On September 15, 2023, the People of Guam (the prosecutorial division of the OAG) filed an Opposition to Defendant San Augustin’s Motion. People’s Opp’n to Mot. to Disqualify Off. of Att’y Gen. (Sept. 15, 2023). On the same day, the People also filed an Opposition to Defendant Nadeau’s Motion. People’s Opp’n to Def Nadeau’s Mot. to Disqualify Off of Att’y Gen. (Sept. 15, 2023). Both Oppositions argue that disqualification is a drastic course of action and that the OAG’s criminal division did not commingle with the civil division to an unethical extent. On September 22, 2023, Defendant San Augustin filed his Reply. Reply to People’s Opp’n Re Mot. to Disqualify Off. of Att’y Gen. (Sept. 22, 2023). In addition, on the same day, Defendant Nadeau filed a Reply. Def Nadeau’s Reply in Supp. of Mot. to Disqualify Off. of Att’y Gen. (Sept. 22, 2023). In their Replies, Defendants reasserted their allegations of prosecutorial misconduct and requested an evidentiary hearing.

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This case first came before this Court on January 16, 2024.² After a stipulation by the parties, the Motion to Disqualify was set to be heard on January 22, 2024. On January 19, 2024, however, the People filed a Motion for Protective Order to prevent the testimony of Attorney General (“AG”) Moylan; Chief Deputy AG (“CDAG”) Joseph Arthur Guthrie; Acting Chief Prosecutor Gloria Ann L. Rudolph; Deputy AG Frank Gumataotao; Investigator Maria Apuron; and former Assistant AG Sandra Miller, arguing that an evidentiary hearing would be improper and violate attorney client privilege. Mot. for Protective Order (Jan. 19, 2024). At the hearing on January 22, 2024, the parties argued the motion wherein the People pointed out that Attorney General Moylan had not been properly subpoenaed. Min. Entry at 9:15:21 AM (Hearing, Jan. 22, 2024). On January 29, 2024, Defendants filed their Oppositions. Def. Nadeau’s Opp’n to People’s Mot. for Protective Order (Jan. 29, 2024) and Def. Arthur U. San Agustin’s Opp’n to People’s Mot. for Protective Order (Jan 29, 2024). On February 2, 2024, the People filed their Reply. Reply to Opp’ns to Ex Parte Appl. for Protective Order (Feb. 2, 2024).

With the Motion for Protective Order still pending, the People filed a new, different Motion to Strike Defendant’s Submission of an Audio CD for violating Court Orders.

2. The case was originally before the Honorable Alberto C. Lamorena III, who was disqualified due to his relationship with Governor Lourdes A. Leon Guerrero. Dec. & Order Granting Def.’s Renewed Statement of Obj. (Jan. 3, 2024). This case was thereafter reassigned to this Court. Notice of Judge Assignment (JCT) (Jan. 16, 2024).

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Mem. Supp. Ex Parte Mot. to Seal & to Strike Def.'s Submission (Jan. 31, 2024). In addition, the People filed a Motion to Seal the impending evidentiary hearing given the potential violations of attorney-client privilege that might surface during testimony. Mot. to Seal Hr'g (Feb. 2, 2024). On February 5, 2024, Defendant San Augustin filed an Opposition. Def. Arthur U. San Augustin's Opp's to People's Mot. to Seal Hr'g' (Feb. 5, 2024). On the same day, Defendant Nadeau filed a Joinder in San Augustin's Opposition. Def. Nadeau's Joiner in Def. Arthur U. San Augustin's Opp's to People's Mot. to Seal Hr'g (Feb. 5, 2024). The People did not file a Reply. At a hearing on February 6th, 2024, the Court Denied the earlier Motion for Protective Order and took the new Motions to Strike and Seal under advisement. Min. Entry at 11:22:53 AM (Hearing, Feb. 6, 2024) and Dec. & Order Denying People's Mot. for Protective Order (Feb. 14, 2024). On February 14, 2024, the Court released a decision granting the People's Motions to Seal and Strike, while also finding that AG Moylan was not properly subpoenaed. Dec. & Order Granting People's Mot. to Seal and Strike (Feb. 14, 2024).

Perhaps in anticipation of this Court's evidentiary hearing, on February 28, 2024, AG Moylan sent notices to twenty-two executive branch agencies of the Government of Guam, notifying them that Moylan was "temporarily withdrawing" from representing the agencies in a civil capacity due to a potential conflict of interest between his civil role and his role as Public Prosecutor. *See* Decl. J., CRQ24-001 at 2 (May 31, 2024). Following the notices, the Speaker of the 37th Guam Legislature called an emergency session, and the Governor called for two

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special sessions to address the issues that arose from the AG's withdrawals. *Id.* at 3. On March 7, 2024, Defendants properly subpoenaed AG Moylan. Subpoena. (Mar. 7, 2024).

With Guam's agencies awaiting clarity regarding their potential conflict with the AG, on March 12, 2024, the sealed evidentiary hearing began, and this Court heard testimony from AG Moylan and Former AAG Jessica Toft. Before the testimony of AG Moylan, Attorney Arriola argued that Moylan should be disqualified from representing the OAG, given his dual role as an advocate and witness under CRPC 3.7. The Court took it under consideration. Min. Entry at 9:35:14 AM (Hearing, Mar. 12, 2024). Later, during the testimony of AAG Jessica Toft, before the People began their cross examination, Attorney Arriola again argued that AG Moylan should not be allowed to cross-examine Toft under CRPC 3.7. The Court agreed, granting the motion to disqualify Moylan as counsel. *Id.* at 3:13:14 PM. At the end of the day, the additional attorneys for the People, DAG Tennyson and AAG Harley, requested that Moylan be allowed to speak during the trial. The Court reiterated that AG Moylan could not question witnesses under CRPC 3.7, but Tennyson and Harley were free to quietly seek advice from Moylan during trial. *Id.* at 3:29:35 PM.

The hearing continued the next morning on March 13, 2024, and the Court heard continued testimony from Former AAG Jessica Toft and testimony from Former AAG Sandra Miller. At the start of the hearing, Attorney Arriola moved to unseal the proceedings and the Court denied the Motion. Min. Entry at 9:25:15 AM (Hearing,

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Mar. 13, 2024). Further, the People moved to reconsider the disqualification of AG Moylan as council, but the Court declined and reiterated that only DAG Tennyson and AAG Harley would be allowed to question witnesses during the hearing. *Id.* Later in the day, before lunch, AG Moylan argued that his disqualification handicapped the People and DAG Tennyson and AAG Harley were not prepared to advocate on the People's behalf. The Court stood by its earlier decision and told AG Moylan that he would have time to find new representation if necessary. *Id.* at 12:09:05 PM. After lunch, the examination of Former AAG Toft ended. *Id.* at 1:50:58 PM. At this point, the examination of Former AAG Sandra Miller began, and continued until the end of the day. *Id.* at 1:55:34 PM and 4:32:11 PM.

On March 14, 2024, the Governor filed a petition with the Guam Supreme Court, requesting a declaratory judgment on several questions related to the AG's withdrawals, including whether the OAG has an attorney client relationship with the executive branch agencies subject to the Guam Rules of Professional Conduct.

On March 15, 2024, the People filed an Ex Parte Motion for Reconsideration of the Oral Motion to Disqualify AG Moylan from Representing the People at the Evidentiary Hearing. Ex Parte Mot. for Recons. of Oral Mot. to Disqualify Att'y Gen. from Representing the People at Evidentiary Hr'g (Mar. 15, 2024). The very same morning, the third day of hearings began, and the Court denied the Ex-Parte Motion. Min. Entry at 10:08:52 AM (Hearing, Mar. 15, 2024). AG Moylan then inquired whether the Court's decision would also prevent him from giving a closing argument, to which the Court responded

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that they had not yet decided. *Id.* at 10:09:41 AM. Finally, Attorney Anita Arriola (“A. Arriola”) appeared and argued that it would be unethical for AG Moylan to give a closing argument. *Id.* at 10:09:50 AM. Attorney J. Arriola also made a standing motion to unseal the case. *Id.* at 10:16:54 AM. After this housekeeping, CDAG Joseph Arthur Guthrie began his testimony. *Id.* at 10:17:24 AM. During testimony, CDAG Guthrie entered into discovery surprise evidence that the OAG established a conflict wall with regards to the case. Attorney J. Arriola asked for a recess to make a copy and review. *Id.* at 10:27:39 AM. This testimony continued until lunch and, upon returning from lunch, the Court sent the parties home for the day, requesting that the Defendants brief their concerns against AG Moylan presenting at closing. *Id.* at 1:41:24 PM.

The fourth day of hearings took place on March 18, 2024. Again, Attorney J. Arriola made a standing Motion to Unseal the proceedings, and again, the Court denied it. Min. Entry at 10:07:00 AM (Hearing, Mar. 18, 2024). The Court heard continued testimony from CDAG Guthrie, as well as testimony from Investigator Maria Apuron and Acting Chief Prosecutor Gloria Ann L. Rudolph. *Id.* at 10:07:05 AM, 11:38:28 AM, and 2:39:05 PM. At the end of the day, regarding the disqualification of AG Moylan from closing arguments, the Court requested that Defendants file Oppositions and the People file a Reply. *Id.* at 3:44:04 PM. On March 20, 2024, the Defendants filed their Oppositions.³ On March 22, 2024, the People filed their

3. Def. Arthur U. San Agustin’s Opp’n to People’s Ex Parte Mot. to Recons. Disqualification of AG Moylan & Witness Moylan from Arguing Evidentiary Hr’g (Mar. 20, 2024) and Def. Nadeau’s Joinder

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Reply.⁴ Finally, on March 29, 2024, the Court filed, under seal, a decision and order denying the People’s Motion for Reconsideration of AG Moylan’s disqualification from the proceedings⁵, and extended the disqualification to closing arguments. Dec. & Order Denying Mot. to Recons. (Mar. 29, 2024).

On the same day, the People filed a Proposed Findings of Fact and Conclusions of Law (“FFCL”) regarding the disqualification of the entire OAG, ahead of closing arguments. [People of Guam’s Prop.] Findings of Fact & Conclusions of Law re: Mot. to Disqualify the AG (Mar. 29, 2024). On April 1, 2024, Defendant San Agustin filed his Proposed FFCL. [Prop.] Findings of Facts & Conclusions of Law re: Mot. to Disqualify Off. of Att’y Gen. (Apr. 1, 2024). On the same day, Defendant Nadeau also filed a Proposed FFCL. Def. Nadeau’s Prop. Findings of Fact & Conclusions of Law (Apr. 1, 2024). The fifth and final day of hearings took place on April 8, 2024, during which the Court heard closing arguments.⁶ At the end of the day, the Court concluded that the hearings failed to surface any evidence that violated attorney client privilege and

in Def. San Agustin’s Opp’n to People’s Ex Parte Mot. to Recons. Disqualification of AG Moylan & Witness Moylan from Arguing at Evidentiary Hr’g (Mar. 20, 2024).

4. Reply to Opp’ns to Ex Parte Mot. for Recons. (Mar. 22, 2024).

5. Under GRPC 3.7.

6. AAG Harley presented closing arguments for the People in place of AG Moylan. Min. Entry at 11:40:10 AM.

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unsealed the proceedings⁷. Min. Entry at 12:20:53 PM (Hearing, Apr. 8, 2024). The Court then took the matter under advisement. *Id.* at 12:22:14 PM.

After the hearing, on May 31st, 2024, the Guam Supreme Court entered a declaratory judgment answering the Governor's questions regarding the AG and his relationship to the executive branch agencies. Decl. J., CRQ24-001 (May 31, 2024). The Guam Supreme Court found that the OAG does indeed have an attorney-client relationship with the agencies, and the Guam Rules of Professional Conduct apply. *Id.*

FINDINGS OF FACT

By preponderance of the evidence, the Court makes the following findings of fact:

Case Background

1. There is, within the Executive Branch of the government of Guam, a Department of Public Health and Social Services ("DPHSS"), the head of which is the Director. 5 GCA § 3111.
2. The Division of Environmental Health exists within the DPHSS and carries out planning and measures to detect and track public health emergencies. 10 GCA § 20103. Environmental

7. The Court later filed an Order formally unsealing the hearing. Order Unsealing Evidentiary Hr'g (Apr. 19, 2024).

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Health Division Personnel have the authority to act in the name of the Director of the DPHSS. 10 GCA § 20104.

3. It is unlawful for any person to operate or open for business any institutional facility as defined in 10 GCA § 25101 (which includes schools for the care and education of students from kindergarten through grade twelve) “without a valid sanitary permit for such establishment or activity, issued by the Director.” 10 GCA § 21101.
4. “As often as may be deemed necessary and, at least once every three (3) months, the Director shall inspect every establishment or activity subject [to the Chapter above]. The date of each inspection shall be noted on the permit.” 10 GCA § 21104.

Structure of the Office of Attorney General

5. “The Attorney General shall have *cognizance of all matters pertaining to public prosecution*, including the prosecution of any public officials.” 5 GCA § 30104 (emphasis added).
6. The Office of the Attorney General conducts criminal prosecutions and brings criminal cases in the name of the People of Guam.
7. “Notwithstanding any other provision of law, the Attorney General shall have *cognizance of*

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all legal matters, excluding the Legislative and Judicial Branches of the government of Guam, *involving the Executive Branch of the government of Guam*, its agencies, instrumentalities, public corporations, autonomous agencies and the Mayors Council[.]” 5 GCA § 30102 (emphasis added).

8. The Office of the Attorney General gives legal advice to government agencies through its “Civil Litigation” division, and formerly through its “Solicitor” division, which has now been merged with the Civil Litigation division. Min. Entry at 10:36:01 AM (Hearing, Mar. 12, 2024).

The OAG’s Representation of DPHSS

9. In 2019, Former AAG Jessica Toft assisted DPHSS in drafting updated rules and regulations of the issuance of school sanitary permits, including § 4719 which provides a 5-year grace period for existing schools to be in compliance with the rules. Min. Entry at 2:43:21 AM (Hearing, Mar. 12, 2024).
10. On January 27, 2020, Defendant, and then DPHSS Director, Arthur U. San Agustin asked the OAG to provide guidance on DPHSS’s authority to enforce school sanitary permit regulations given the five-year grace period in § 4719. Nadeau Decl. at 20-37 and *Def.’s Ex. L*.

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11. In response to a request for legal services from DPHSS, on August 10, 2022, then AAG Sandra Miller issued an “Information and Guidance” memorandum to the then Acting Director for DPHSS Camacho regarding the Implementation of the Rules and Regulations for School Building Sanitation. *Def.’s Ex. K*.

Investigation by the Government Corruption Division

12. In January 2023, after taking office as Attorney General of Guam, AG Moylan opened an investigation into the sanitary permits of several Guam schools. Later, AG Moylan personally participated in the investigation of DPHSS. Min. Entry at 10:30:00 AM (Hearing, Mar. 12, 2024) and Min. Entry at 2:39:00 PM (Hearing, Mar. 13, 2024).
13. On February 9, 2023, upon the request of then Acting Chief Prosecutor Heather M. Zona, a Grand Jury issued its first Subpoena Duces Tecum in Investigative Case AG23-246 to the Custodian of Records for DPHSS. *Def.’s Ex. P*.
14. On February 13, 2023, DPHSS Director San Agustin sent a letter to AG Moylan, claiming a conflict of interest since DPHSS was allegedly the AG’s client, and sought assistance with the subpoena. There was no response, so DPHSS returned documents in response to the February 2023 subpoena without any assistance from the

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OAG. In February 2023, AAG Jessica Toft also left the OAG. *Def.'s Exs. R1 and BB*.

15. On April 6, 2023, San Augustin sent a formal request for legal services concerning the effective date of a sanitary permit. Before May 2023, AG Moylan received updates from DAG Zona regarding the investigation into school sanitary permits and then from DAG Rudolph before the case was publicly filed in July 2023. *Def.'s Ex. C* and Min. Entry at 11:11:00 AM (Hearing, Mar. 12, 2024).

Conflict Wall

16. On April 17, 2023, CDAG Guthrie issued a policy statement to all attorneys and staff regarding Ethical Screens and Conflict Walls. *Pl.'s Ex. 1*.
17. On May 2, 2023, two memos were issued by Guthrie to all employees of the OAG regarding the establishment of an Ethical Screen for AG23-246: one memo for the Civil Division and another memo for the General Crimes Division. *Pl.'s Ex. 2*.
18. On May 4, 2023, a second Grand Jury Subpoena Duces Tecum for AG23-246 was issued by Gloria Rudolph to Tom Nadeau seeking, among other things, sanitary permits, inspection reports, health certificates, and supporting documentation for all DOE facilities from Jan. 1, 2018, to the present (at that time, May 4, 2023). *Def.'s Ex. O*.

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19. On May 5, 2023, DPHSS requested legal assistance with the May 4, 2023 grand jury subpoena duces tecum issued to Tom Nadeau, in which Former AAG Miller assisted in facilitating documentation responsive to the subpoena duces tecum. *Def.'s Exs. D, F, and S*. On May 11, 2023, Former AGG Miller accompanied Defendant Nadeau to the Grand Jury. Min. Entry at 2:39:21 PM (Hearing, Mar. 13, 2024).
20. In July 2023, this case was publicly filed and on July 3, 2023, Defendants Arthur U. San Agustin and Masatomo Nadeau were indicted and charged by a Grand Jury. Indictment (July 3, 2023).
21. On July 27, 2023, the OAG issued a Legal Opinion in response to San Agustin's April 6 inquiry. *Def.'s Ex. M*.
22. On August 21, 2023, the Government filed a Superseding Indictment charging San Agustin. On September 1, 2023, Defendant San Agustin filed a Motion to Disqualify the Office of the AG (later joined by Nadeau) claiming that the OAG was complicit in how the DPHSS manages sanitary permits and enforces the School Sanitation Regulations because of legal advice provided by the OAG civil division (Former AAG Sandra Miller). Mot. to Disqualify Off. Of Att'y Gen. (Sept. 1, 2023) and Super. Indictment (Aug. 21, 2023).

*Appendix D***DISCUSSION**

In Guam, “the current standard for attorney disqualification is whether an attorney’s continued representation of a party or participation in an action violates or significantly risks violating the Guam Rules of Professional Conduct.” *Barrett-Anderson v. Camacho*, 2018 Guam 20 ¶ 20. “[D]isqualification is a drastic course of action that should not be taken simply out of hypersensitivity to ethical nuances or the appearance of impropriety.” *Id.* ¶ 17.

Defendants Motions to Disqualify the AG cite several rules, including Guam Rule of Professional Conduct (“GRPC”), particularly GRPC 1.8 and GRPC 1.13(b) and (d), that may be implicated here. However, Defendants’ Motions primarily turn on GRPC 1.7, which provides, in relevant part:

- (a) ... 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

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another client, a former client or a third person, or by a personal interest of the lawyer.

A. Do the Guam Rules of Professional Conduct Apply to the OAG?

The Court answers this question in the affirmative. Guam Rules of Professional Conduct apply to the attorneys of the OAG, including the Attorney General himself. *See Barrett-Anderson*, 2018 Guam 20 ¶¶ 14-28 (analyzing Assistant Attorney General’s alleged conflict of interest); *People v. Tennessen*, 2009 Guam 3 ¶¶ 33-50 (analyzing the Attorney General’s own alleged conflict of interest). Other jurisdictions agree. *See, e.g., Att’y General v. Mich. Public Service Com’n*, 625 N.W.2d 16, 27 (Mich. Ct. App. 2000) (“It is well settled that in the control of litigation, the Attorney General has the duty to conform his conduct to that prescribed by the rules of professional ethics.” (quoting *Manchin v. Browning*, 296 S.E.2d 909 (W. Va. 1982)), *Chun v. Bd. of Trustees of Employees’ Retirement Sys. Of State of Hawaii*, 952 P.2d 1215, 1237-38 (Haw. 1998), *see also* 7A C.J.S. Attorney General § 46, “Conflict Interests” (2024), 7 Am. Jur. 2d Attorney General § 17 (2024).

In general, the “rules of professional conduct are not to be mechanically applied” to the attorneys of the OAG, or to any other Guam attorneys. *Barrett-Anderson*, 2018 Guam 20 ¶ 24; *accord Chun*, 952 P.2d at 1236, *Michigan Public Service Com’n*, 625 N.W.2d at 33. Recognizing this, other jurisdictions have determined that the “unique

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nature” of their OAG (or its local equivalent) “allow[s] dual representation in certain circumstances not otherwise permitted in the arena of private practice.” *See id.*; *State ex rel. Com’r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 773-74 (Tenn. Ct. App. 2001). Guam, however, has explicitly “reject[ed] the Attorney General’s request for flexibility under the [GRPC] based on [their] unique position as the Chief Legal Officer of the Government of Guam.” *Barrett-Anderson*, 2018 Guam 20 ¶ 24, *see also Santos v. Camacho*, 2006 WL 581251 * 7 (D. Guam Mar. 10, 2006). Guam Rules of Professional Conduct therefore apply to the attorneys of the OAG, including the Attorney General himself. The GRPC applies to the OAG generally and therefore GRPC 1.7(a) applies specifically.

B. Is the OAG Disqualified Because Their Continued Participation in this Case Would Violate the Guam Rules of Professional Conduct?

The Court answers this question in the affirmative. Under *Barrett-Anderson*, the OAG is disqualified if their continued participation if this case would violate the Guam Rules of Professional Conduct (“GRPC”). The OAG’s continued participation in this case would violate GRPC 1.7(a), because the OAG has a concurrent conflict of interest. GRPC 1.7(a) “prohibit[s] an attorney from representing a client whose interests are adverse to the interests of another former or current client.” *Guerrero v. Moylan*, 2002 Guam 18 ¶ 49. The following analysis demonstrates that the OAG violated GRPC 1.7(a) by focusing on three issues: (1) whether this case involves

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two distinct “clients” of the OAG, (2) whether the interest of those two clients conflicts, and (3) whether the conflict was properly addressed with a conflict wall.

i. This Case Implicates Two Clients of the OAG

It is undisputed that one “client” of the OAG is the public interest. *See, e.g., In re Kline*, 311 P.2d 321, 390 (Kan. 2013) (“as Attorney General... his ‘client’ was the public.”); *Levitt v. Attorney General*, 151 A. 171, 174 (Conn. 1930). The People maintain that the prosecutorial division of the OAG is a “law firm” that serves “the People of Guam” or the public interest in criminal prosecutions. *See* [People of Guam’s Prop.] Findings of Fact & Conclusions of Law re: Mot. to Disqualify the AG at 2 (Mar. 29, 2024) (referring to the prosecution as an “important public law firm”). Defendants do not disagree. Since Guam law empowers the Attorney General to serve as the “public prosecutor” for Guam, 5 GCA § 30104, and to “conduct... the prosecution of all offenses against the laws of Guam,” 5 GCA § 30109(a), the Court agrees that the public is one “client” of the OAG.

While the parties agree that the public interest is one “client” implicated by this case, the parties disagree on whether the OAG has a second “client,” in the form of the Defendants. The People argue that the OAG “represents both the Government of Guam and the Public Interest,” but that these two entities are essentially one client, because “all government officials are agents of our client, the Government of Guam, which belongs to the ‘People

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of Guam.’” People’s Opp’n to Mot. to Disqualify Off. of Att’y Gen. at 2 (Sept. 15, 2023). This circular contention is opposed by Defendants, who argue that historically the OAG treats agencies like DPHSS and their constituents as clients distinct from the public interest. [Prop.] Findings of Facts & Conclusions of Law re: Mot. to Disqualify Off. of Att’y Gen. at 12 (Apr. 1, 2024). Further, Defendant Nadeau argues that he “reasonably believed that AAG Miller was advising him personally when he expressed concern about testifying before the grand jury.” Def. Nadeau’s Prop. Findings of Fact & Conclusions of Law at 5 (Apr. 1, 2024).

This court does not come to any conclusions about whether the OAG represents private individuals⁸, however, the Guam Supreme Court recently made it very clear that the OAG represents executive agencies. *See* Decl. J., CRQ24-001 at 7 (May 31, 2024) (“The AG has an attorney-client relationship with executive branch agencies, and the rules of professional conduct apply.”). In their Declaratory Judgement regarding AG Moylan’s recent withdrawal from executive branch agencies, the Guam Supreme Court continues:

...as an inanimate entity, an agency must act through its agents since it cannot speak directly

8. Although, generally, the AG strictly represents the public. *See, e.g., Cebertowicz v. Madigan*, 48 N.E.3d 702, 706-07 (ILL. Ct. App. 2016); *Cliff v. Vacco*, 267 A.D.2d 731 (N.Y. App. Div. 1999).

9. Citing *Morgan v. N.Y. State Dep’t of Env’t Conservation*, 779 N.Y.S.2d 643, 645 (App. Div. 2004); *Attorney General v. Mich. Pub. Serv. Comm’n*, 625 N.W.2d 16, 28 (Mich. Ct. App. 2000).

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to its lawyers. *Cf. Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348 (1985). Thus, although the client is the agency, when one of the constituents of an agency communicates with the agency's lawyer in that person's official capacity, the communication is confidential. *See Jess by Reinecke v. Danforth*, 485 N.W.2d 63, 67 (Wis. 1992). If the agency's attorney believes that the official's interests are adverse to the agency's, he has a duty to explain to the official that he represents the agency's interest, not the individual's. *See* Guam R. Prof'l Conduct 1.13(d).

Id. at ¶ 7.

The Guam Supreme Court's holding aligns with Former Assistant Attorney Generals Jessica Toft's and Sandra Miller's testimony regarding the history of the OAG and its procedure.¹⁰

Regarding the case before us specifically, Former AAG Toft testified that she assisted DPHSS in drafting the rules and regulations concerning School Sanitary Permits in 2019. Min. Entry at 2:43:21 AM (Hearing,

10. Former Assistant Attorney Generals testified that under prior Attorney Generals Lirnitaco, Rapada, Barret-Anderson, and Camacho, agency requests for legal advice came by formal letter and, when accepted, created an attorney client relationship between the OAG, the applicable agency, and its director and designated employees. Min. Entry at 2:23:00 PM (Hearing, Mar. 12, 2024); Min. Entry at 2:00:00 PM (Hearing, Mar. 13, 2024); and *Def's* Ex. T1.

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Mar. 12, 2024). Former AAG Miller also testified that she worked directly with Nadeau regarding his Grand Jury subpoena and viewed her role as facilitating the disclosure of documents from DPHSS to the prosecution division. Min. Entry at 2:39:21 PM (Hearing, Mar. 13, 2024). It follows that the DPHSS is therefore the OAG's "client." Thus, the case implicates two clients of the OAG: (1) the public interest and (2) the DPHSS, acting through its agents Director San Augustin and Chief Environmental Public Health Officer Nadeau, the Defendants.

ii. The OAG Has a Concurrent Conflict of Interest

Under GRCP 1.7(a)(2), a concurrent conflict of interest exists where "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." That is the situation before us.

The targets of the prosecution in this case are also executive branch employees represented by the OAG; this creates a concurrent conflict of interest. Exasperating this conflict is the fact that official DPHSS activity, advised on by the OAG, is now the subject of the OAG's prosecution. For the reasons above, the DPHSS is a client of the OAG. Thus, DPHSS has the same right to "undivided loyalty" from the OAG as any other client. *See* Decl. J., CRQ24-001 at 7 (May 31, 2024) ("As his clients, the AG owes a duty of confidentiality and loyalty to the agencies."). In the context of concurrent conflicts of interest, loyalty is the "primary

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value at stake.” *Metro-Goldwyn-Alayer, Inc. v. Tracing Corp.*, 36 Cal. App. 4th 1832, 1839 (Ct. App. 1995). Further, the Guam Supreme Court recently clarified that “an attorney in the Office of the Attorney General, including the AG, has an actual conflict of interest when they have advised a government officer in their official capacity on matters related to an offense the officer is charged with.” *See Decl. J.*, CRQ24-001 at 8 (May 31, 2024).

Attorneys in the Office of the Attorney General, including the AG himself, advised DPHSS officials in exactly the matter described above. AAG Toft assisted DPHSS in drafting the rules and regulations concerning the very School Sanitary Permits at issue in this case, and AGG Miller later assisted DPHSS with a matter concerning the applicability and interpretation of a grace period for those very School Sanitation Regulations in 2020. Min. Entry at 2:43:21 AM (Hearing, Mar. 12, 2024). Finally, AG Moylan himself instructed AAG Miller, who was representing DPHSS, that she was to have Defendant Nadeau personally appear and testify before the Grand Jury regarding the charges in this case. Min. Entry at 2:39:21 PM (Hearing, Mar. 13, 2024) and *Def’s Exs. F and S*. Thus, a concurrent conflict of interest exists because the OAG “advised a government officer in their official capacity on matters related to an offense the officer [was] charged with.” *See Decl. J.*, CRQ24-001 at 8 (May 31, 2024).

DPHSS has a valid interest in receiving loyal, confidential legal representation. This is true of the organization as a whole, not merely its constituent

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employees. Based on the above analysis, the OAG clearly risks subordinating the DPHSS's legal interests to the OAG's prosecutorial interests. The Court therefore concludes that the OAG has a concurrent conflict of interest under GRPC 1.7(a)(2).

iii. There Was a Conflict Wall, But It Was Late and Ineffective

Generally, when a lawyer is disqualified for a conflict under Rule 1.9 or 1.7, that conflict is imputed to that lawyer's firm unless "the disqualified lawyer is timely screened from any participation in the matter..." GRPC 1.11(b).

As the OAG's director, AG Moylan "must make reasonable efforts to ensure that the Office of the Attorney General has measures in effect that give reasonable assurance that all lawyers in the Office of the Attorney General conform to the Rules of Professional Conduct. The AG must also make reasonable efforts to ensure that the lawyers under his direct supervisory authority conform to the Rules of Professional Conduct." *See* Decl. J., CRQ24-001 at 9 (May 31, 2024) (citing Guam R. Prof'l Conduct 5.1(a) and (b)). The Guam Supreme Court recently held that the AG has discretion regarding these "reasonable efforts," which can include appointing a Special Assistant Attorney General, recusing from prosecution, or erecting "conflict walls." *Id.* Nevertheless, "faced with such a conflict, the AG cannot simply choose to do nothing." *Id.* (citing *Lacey v. Maricopa County*, 693 F.3d 896, 933 (9th Cir. 2012)).

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In the case before us, the AG chose to do something. However, the AG's reasoning behind this choice is at times paradoxical and confusing. On September 15, 2023, the OAG initially took the position that there was no conflict of interest. People's Opp'n to Mot. to Disqualify Off. of Att'y Gen. at 3-5 (Sept. 15, 2023). However, on the third day of hearings, the OAG contradicted itself and surprised this Court with evidence of a conflict wall, claiming that the DPHSS investigation was screened all along. Min. Entry at 10:27:39 AM (Hearing, Mar. 15, 2024). To explain the split in the OAG's narrative, the OAG claims that they established the conflict wall "out of an abundance of caution" and not because of a genuine conflict. Min. Entry at 10:53:00 AM (Hearing, Mar. 15, 2024). To put it mildly, the Court finds this story suspect. Based on the historical record¹¹, the OAG does not typically screen its attorneys "out of an abundance of caution" while simultaneously denying an actual conflict occurred. Nevertheless, based on the above analysis, an actual conflict *did* occur. Thus, the Court must analyze the OAG's paradoxical "conflict-without-a-conflict-wall" at face value and determine whether the wall sufficiently screened the rest of the OAG from its concurrent conflict of interest.

Where a conflict is demonstrated, the burden shifts to the People to demonstrate by clear and convincing evidence "that the challenged attorney has been sufficiently

11. Former AAG Toft provided Exhibit T1 to demonstrate that a list of conflicts, including those of prior Attorneys General, was maintained, logged and recorded at the OAG under the past three Attorneys Generals' administrations. Min. Entry at 2:23:00 PM (Hearing, Mar. 12, 2024) and *Def.'s Ex. T1*.

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screened from the remainder of the staff and its work on the pending case.” *See e.g., State v. Claybrook*, No. 3, 1992 WL 17546 at 7 (Tenn. Crim. App. Oct. 28, 1999). Guam case law suggests that the OAG can screen attorneys with conflict walls to avoid disqualification of the entire office. *See Tennesen*¹² 2009 Guam 3 ¶ 36 (“Where conflict walls are effectively implemented, disqualification of the entire office may be unnecessary.”), *People v. Santos*, 2018 2 Guam 12 ¶ 14. In Guam, “[t]he burden falls upon the government to show that the conflict wall provided an effective screen.” *Tennesen*, 2009 Guam 3 ¶ 46 (citing *State v. Gonzales*, 119 P.3d 151, 163 (N.M. 2005)).

During his surprise testimony, CDAG Guthrie testified that he and AG Moylan agreed, during the early stages of the DPHSS investigation, to establish a conflict wall screening the Prosecution Division from the Civil Division of the OAG. Min. Entry at 10:24:00 AM (Hearing, Mar. 15, 2024). According to CDAG Guthrie, the plan was for Guthrie to oversee the Civil Division while AG Moylan oversaw the Prosecution Division, including the prosecution of DPHSS. *Id.* and *Def’s Ex. AA*. Yet, Moylan and Guthrie did not erect their conflict wall regarding this case until May 2, 2023. Min. Entry at 10:25:30 AM (Hearing, Mar. 15, 2024) and *Ex. 1*. This was almost three months after the OAG first opened their investigation into

12. The Court recognizes that *Tennesen* was overruled in part by *Barrett-Anderson*, 2018 Guam 20 ¶ 19, but only “to the extent that [*Tennesen*] is inconsistent.” The inconsistency between the cases involves the standard evaluating disqualification, not the use of conflict walls. *See Id.* ¶¶ 15-20. Since *Barrett-Anderson* did not address conflict walls, it did not overrule this portion of *Tennesen*.

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DPHSS and almost a month after the OAG issued their first subpoena. *Def's Exs. D, R1, and J*. Thus, the conflict wall was not “timely” under GRPC 1.11(b). Further, it violates the OAG’s own policy, which requires that an effective conflict wall must be “erected before or at the time when the conflict arises.” *Def's Ex Z*.

Compounding these problems, AG Moylan, who was on the Prosecutorial side of the ethical wall, instructed AAG Miller, who was on the Civil side, to have Defendant Nadeau testify before the Grand Jury and provide documents that were later used in Nadeau’s own prosecution. Min. Entry at 2:39:21 PM (Hearing, Mar. 13, 2024). This blatantly violates the civil / prosecutorial boundary that the CDAG himself testified he established with Moylan. Furthermore, AAG Miller testified that she received a memo regarding the conflict wall for AG23-246 (the prosecution of DPHSS), but she did not know who the screened lawyers were on the other side of the wall, and she was unsure whether the wall was effective. *Id.* at 2:29:00 PM. This might explain why AAG Miller failed to advise Nadeau that she was not representing him personally and that he had a right to retain his own lawyer.¹³ Finally, AAG Miller regularly communicated across the wall with DAG Rudolph, as well as Investigator Apuron, who both testified that they were two of the primary OAG employees—after AG Moylan—driving

13. *See* Decl. J., CRQ24-001 at 9 (May 31, 2024) (“If the agency’s attorney believes that the official’s interests are adverse to the agency’s, he has a duty to explain to the official that he represents the agency’s interest, not the individual’s.” citing Guam R. Prof’l Conduct 1.13(d)).

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this case's prosecution. Min. Entry at 11:40:00 AM and 2:40:00 PM (Hearing, Mar. 18, 2024). All of this violated the OAG's own policy drafted by CDAG Guthrie, which mandates notice, with acknowledgment in writing, to all screened persons on both sides of a conflict wall.¹⁴

An old adage¹⁵ inquires, *if a tree falls in a forest, and no one is around to hear it, does it make a sound?* This Court must similarly inquire, *if a conflict wall is set up, and no one in the office is aware of whom is conflicted, does it prevent a conflict of interest?* The Court declines to answer the former, as the old adage is unknowable, however, we can answer the latter assuredly in the negative. The OAG failed to provide sufficient evidence that their attorneys knew who was on which side of the conflict wall, nor did they provide evidence of warnings or consequences being issued after the wall was breached. It is therefore clear that the conflict wall was totally ineffective. Thus, the concurrent conflict of interest is imputed across the OAG, and the whole office must be disqualified from this prosecution.

CONCLUSION AND ORDER

Based on the above analysis, the Court concludes that the Office of the Attorney General's continued representation in this case will violate GRPC 1.7. The

14. *See Def's Ex. Z.*

15. *See* George Berkley, A Treatise Concerning the Principles of Human Knowledge. 45 (2d ed. 1710); or Charles Riborg Mann & George Ransom Twiss, Physics (1910).

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conflict of interest was not mitigated by the instantiation of an effective conflict wall. Therefore, the Court **GRANTS** the Defendants' Motions to Disqualify the Office of the Attorney General.

Based on the Court's analysis and conclusion that the Office of the Attorney General's continued representation in this case will violate GRPC 1.7 and that the conflict of interest had not been mitigated by the imposition of an effective conflict wall; the Court finds, consequently, that the Government of Guam must secure the services of a special prosecutor to handle this matter and independent from the supervision and/or oversight of the Office of the Attorney General.

WHEREFORE, IT IS HEREBY ORDERED that the appointment of a special prosecutor be made within thirty (30) days of the filing of this Order or the matter will be dismissed in its entirety.

SO ORDERED, this 1 day July of 2024.

/s/ John C. Terlaje

HONORABLE JOHN C. TERLAJE

Judge, Superior Court of Guam

**APPENDIX E — ORDER FOR DISMISSAL OF
THE SUPERIOR COURT OF GUAM,
FILED OCTOBER 18, 2024**

IN THE SUPERIOR COURT OF GUAM

CRIMINAL CASE NO. CF0446-23

PEOPLE OF GUAM,

Plaintiff,

vs.

ARTHUR U. SAN AGUSTIN
(D.O.B.: 01/01/1965),
MASATOMO NADEAU
(D.O.B.: 10/24/1968),

Defendants.

ORDER FOR DISMISSAL

This matter came before the Honorable John C. Terlaje on September 6, 2024 pursuant to a Motion for Reconsideration and was decided on the briefs, without oral argument. Attorney Joaquin Arriola (“J. Arriola”) and Attorney William B. Brennan (“Brennan”) represent Defendant San Agustin and Attorney G. Patrick Civile (“Civille”) represents Defendant Nadeau. The People remain unrepresented as Attorney General Douglas Moylan has been Disqualified and no special prosecutor has been appointed.

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On July 1, 2024, this Court issued a Decision and Order granting Defendants' Motions to Disqualify the Office of the Attorney General. *See* Decision and Order (Motions to Disqualify), Jul. 1, 2024. The Court ordered that "the Government of Guam must secure the services of a special prosecutor to handle this matter . . . independent from the . . . oversight of the Office of the Attorney General." The Court ordered that this appointment be made within thirty (30) days of the filing of the Order, or "the matter will be dismissed in its entirety."

On July 11, 2024, the People filed their Motion for Reconsideration of the July 1, 2024, Decision and Order. People's Mot. for Recons. of the July 1, 2024, Decision & Order (Jul. 11, 2024). Defendant San Augustin filed an Opposition on July 26, 2024. Def's Opp'n to OAG's Mot. to Recons. July 26, 2024, Decision & Order (Jul. 26, 2024). Defendant Nadeau joined in the Opposition on the same day. Def. Nadeau's Joiner in Arthur San Agustin's Opp'n to OAG's Mot. to Recons. July 1, 2024, Decision & Order (Jul. 26, 2024).

The Court issued a Decision and Order on the Motions to Reconsider on September 6, 2024, denying the People's Motion to Reconsider and reaffirming the decision of the previous Decision and Order on the Defendants' Motions to Disqualify the Office of the Attorney General.

The People failed to comply with the Court's orders to appoint a special prosecutor within thirty (30) days of the Decision and Order on the Motion to Reconsider. While the People did file a Verified Petition for Permission to

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Appeal with the Supreme Court of Guam on October 4, 2024, the People did not file a Motion to Stay the Order to appoint a special prosecutor. Therefore, based on the People's failure to adhere to the aforementioned order, the Court dismisses this case with prejudice.

**IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED AS FOLLOWS:**

1. That the above-captioned matter be DISMISSED
WITH PREJUDICE.
2. That any release conditions currently placed on
all Defendants be VACATED

SO ORDERED, this 15 day of October 2024

/s/ John C. Terlaje
HON. JOHN C. TERLAJE
Judge, Superior Court of Guam

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**APPENDIX F — NOTICE OF COMPLIANCE OF
THE SUPREME COURT OF GUAM, HAGĀTÑA,
GUAM, FILED FEBRUARY 12, 2026**

IN THE SUPREME COURT OF GUAM

HAGĀTÑA, GUAM

Supreme Court Case No. CRA24-023
Superior Court Case No. CF0446-23

PEOPLE OF GUAM,

Plaintiff-Appellant.

vs.

ARTHUR U. SAN AGUSTIN AND
MASATOMO NADEAU,

Defendants-Appellees.

**Office of the Attorney General of
Guam's Notice of Compliance with
Order of February 4, 2026**

COMES NOW the Office of the Attorney General of Guam, by and through undersigned counsel in his capacity as the Chief Deputy Attorney General and Administrating Officer over administrative duties, and gives notice of the Office's compliance with the Court's February 4, 2026 Order which reads in relevant part that "this court PROSPECTIVELY CONDITIONS

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any further proceedings related to this appeal on the appearance of conflict-free substitute counsel.” Order at 3 (February 4, 2026). On February 6, 2026 the AG’s Office sent a mass electronic mailing to all Guam Bar members soliciting their appearance on behalf of the People of Guam in this case by the close of day on Monday, February 9, 2026. *See* Exhibit A. On February 10, 2026 it extended the response deadline to the close of day on February 11, 2026. *See* Exhibit B. To date, no Guam Bar members have contacted the AG’s Office to enter this appearance as conflict-free substitute counsel on behalf of the People of Guam in this case.

Respectfully submitted this 12th day of February, 2026.

OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General

/s/ Joseph Guthrie
JOSEPH GUTHRIE
Chief Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, I electronically filed the foregoing document with the Supreme Court of Guam by using the electronic filing system and that the following parties or their counsels of record will be served electronically:

JOAQUIN C. ARRIOLA, JR., ESQ.

WILLIAM B. BRENNAN, ESQ.

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Hagåtña, Guam 96910

pciville@civilletang.com

Attorney for Defendant-Appellee

MASOTOMO NADEAU

I declare, under penalty of perjury, this 12th day of February, 2026 that the foregoing is true and correct to the best of my knowledge.

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OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General

/s/ Joseph Guthrie
JOSEPH GUTHRIE
Chief Deputy Attorney General

Appendix F

Fwd: Action Needed: People of Guam vs. Arthur U. San Agustin and Mastromo Nadeau, Supreme Court Case No. CRA24-023.

Hafa Adai:

Colleagues. Please find the attached order of the Supreme Court of Guam. It requires “the appearance of conflict-free substitute counsel ... not subject to the Superior Court’s disqualification order [of the Office of the Attorney General of Guam]” to represent the People of Guam in the above appeal.

Please reply to this email message if (i) you are interested in filing an appearance on behalf of the People of Guam in this criminal case appeal, and (ii) if you believe that you do not have any ethical conflicts.

Please respond by close of business on Monday, February 9, 2025 via reply email (jguthrie@oagguam.org).

Thank you.

/s/

Joseph A. Guthrie

Chief Deputy Attorney General

Office of the Attorney General of Guam

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Fwd: Action Needed: People of Guam vs. Arthur U. San Agustin and Mastromo Nadeau, Supreme Court Case No. CRA24-023.

Hafa Adai:

Colleagues. Please find the attached order of the Supreme Court of Guam. It requires “the appearance of conflict-free substitute counsel ... not subject to the Superior Court’s disqualification order [of the Office of the Attorney General of Guam]” to represent the People of Guam in the above appeal.

Please reply to this email message if (i) you are interested in filing an appearance on behalf of the People of Guam in this criminal case appeal, and (ii) if you believe that you do not have any ethical conflicts.

On Friday, February 6, 2026 we issued the original notice. To date, we have received no responses. Consequently, we are extending the period of time to respond to our office expressing an interest in entering an appearance in the above appeal. **Please reply by emailing jguthrie@oagguam.org on or before the close of business on Wednesday, February 11, 2026.**

Thank you.

/s/

Joseph A. Guthrie

Chief Deputy Attorney General

Office of the Attorney General of Guam

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**APPENDIX G — SUPERSEDING INDICTMENT
OF THE SUPERIOR COURT OF GUAM,
FILED AUGUST 21, 2023**

IN THE SUPERIOR COURT OF GUAM

CRIMINAL CASE NO. CF0446-23

PEOPLE OF GUAM,

vs.

ARTHUR U. SAN AGUSTIN, (DOB: 01/01/1965)
MASATOMO NADEAU, (DOB: 10/24/1968)

Defendants.

Filed August 21, 2023

SUPERSEDING INDICTMENT

Charges:

- 1) **TAMPERING WITH PUBLIC RECORDS**
(Fifteen Counts)
(As a 3rd Degree Felony)
Special Allegation:
Crime Against the Community
- 2) **OBSTRUCTING GOVERNMENTAL FUNCTIONS**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community

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- 3) **OFFICIAL MISCONDUCT**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community
- 4) **OBSTRUCTING GOVERNMENTAL FUNCTIONS**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community
- 5) **OFFICIAL MISCONDUCT**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community

THE SUPERIOR COURT OF GUAM GRAND JURY
HEREBY CHARGES:

FIRST CHARGE

(Count One)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 210002735 issued to Department of Education — Simon Sanchez High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

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SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Two)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 210002733 issued to Department of Education — George Washington High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social**

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Services, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Three)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 210002736 issued to Department of Education — Southern High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

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(Count Four)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003106 issued to Department of Education — P.C. Lujan Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Five)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false

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entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003111 issued to Department of Education — D.L. Perez Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Six)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003107 issued to Department of Education — Capt. H.B. Price Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

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SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Seven)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with Intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003123 issued to Department of Education — Jose Rios Middle School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social**

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Services, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Eight)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003110 issued to Department of Education — Wettengel Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

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(Count Nine)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for Information or record, i.e., ***Sanitary Permit No. 220003125 issued to Department of Education — Oceanview Middle School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Ten)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure,

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make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003117 issued to Department of Education — Agueda 1. Johnston Middle School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Eleven)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003100 Issued to Department of Education – J.Q. San Miguel Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

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SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Twelve)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003098 issued to Department of Education - Juan M. Guerrero Elementary School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social**

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Services, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Thirteen)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the **offense of *Tampering With Public Records (As a 3rd Degree Felony)*** In that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003121 issued to Department of Education — F.B. Leon Guerrero Middle School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

*Appendix G**(Count Fourteen)*

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003116 Issued to Department of Education Adacao Elementary School*** or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Fifteen)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in

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that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003108 issued to Department of Education — Tamuning Elementary School*** or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2022 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

SECOND CHARGE

On or about June 30, 2021 to present, inclusive, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of the Guam Department of Public Health and Social Services**, did commit the offense of ***Obstructing Governmental Functions (As a Misdemeanor)***, in that he intentionally obstructed, impaired, or perverted the administration of law or other governmental function by breach of official duty, in violation of 9 GCA § 55.45.

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***SPECIAL ALLEGATION
Crime Against the Community***

On or about the period between June 30, 2021 to present, inclusive, **ARTHUR U. SAN AGUSTIN, Director of the Guam Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

THIRD CHARGE

On or about the period between June 30, 2021 to present, inclusive, in Guam, **ARTHUR U. SAN AGUSTIN, Director of the Guam Department of Public Health and Social Services**, did commit the offense of ***Official Misconduct (As a Misdemeanor)***, in that, with intent to benefit himself or another person or to deprive another person of a benefit, he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office, in violation of 9 GCA § 49.90(b).

***SPECIAL ALLEGATION
Crime Against the Community***

On or about the period between June 30, 2021 to present, inclusive, **ARTHUR U. SAN AGUSTIN, as Director of the Guam Department of Public Health and Social**

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Services, did knowingly take action regarding government services In such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

FOURTH CHARGE

On or about June 30, 2021 to present, inclusive, in Guam, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did commit the offense of ***Obstructing Governmental Functions (As a Misdemeanor)***, in that he intentionally obstructed, impaired, or perverted the administration of law or other governmental function by breach of official duty, in violation of 9 GCA § 55.45.

***SPECIAL ALLEGATION
Crime Against the Community***

On or about the period between June 30, 2021 to present, Inclusive, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

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FIFTH CHARGE

On or about the period between June 30, 2021 to present, inclusive, in Guam, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did commit the offense of ***Official Misconduct (As a Misdemeanor)***, in that, with intent to benefit himself or another person or to deprive another person of a benefit, he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office, in violation of 9 GCA § 49.90(b).

***SPECIAL ALLEGATION
Crime Against the Community***

On or about the period between June 30, 2021 to present, inclusive, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

Dated this 21st day of August, 2023.

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OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General of Guam

/s/

GLORIA ANN L. RUDOLPH
Assistant Attorney General,
Government Corruption Division

A TRUE BILL

/s/

FOREMAN OF THE GRAND JURY

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**APPENDIX H — INDICTMENT OF
THE SUPERIOR COURT OF GUAM,
FILED JULY 3, 2023**

IN THE SUPERIOR COURT OF GUAM

CRIMINAL CASE NO. CF0446-23

PEOPLE OF GUAM,

vs.

ARTHUR U. SAN AGUSTIN, (DOB: Unknown)
MASATOMO NADEAU, (DOB: Unknown)

Defendants.

Filed July 2, 2023

INDICTMENT

Charges:

- 1) **TAMPERING WITH PUBLIC RECORDS**
(Five Counts)
(As a 2nd Degree Felony)
Special Allegation:
Crime Against the Community
- 2) **OBSTRUCTING GOVERNMENTAL
FUNCTIONS**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community

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- 3) **OFFICIAL MISCONDUCT**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community
- 4) **OBSTRUCTING GOVERNMENTAL
FUNCTIONS**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community
- 5) **OFFICIAL MISCONDUCT**
(As a Misdemeanor)
Special Allegation:
Crime Against the Community

THE SUPERIOR COURT OF GUAM GRAND JURY
HEREBY CHARGES:

FIRST CHARGE
(Count One)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 210002735 Issued to Department of Education - Simon Sanchez High School***, or required by law to be kept by

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others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Two)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN, as Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, **i.e., *Sanitary Permit No. 210002733 issued to Department of Education – George Washington High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

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SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN**, as Director of Guam Public Health and Social Services, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Three)

On or about June 30, 2021, in Guam, **ARTHUR U. SAN AGUSTIN**, as Director of “Guam Public Health and Social Services, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 210002136 Issued to Department of Education - Southern High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN**, as Director of Guam Public Health and Social Services, did knowingly take action regarding

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government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

(Count Four)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003127 Issued to Department of Education - George Washington High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA §55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services** did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

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(Count Five)

On or about June 30, 2022, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did commit the offense of ***Tampering With Public Records (As a 3rd Degree Felony)*** in that he did knowingly, with intent to defraud or injure, make a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, i.e., ***Sanitary Permit No. 220003130 Issued to Department of Education -Simon Sanchez High School***, or required by law to be kept by others for information of the government, in violation of 9 GCA § 55.10(a)(1)&(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30 2021 to present, **ARTHUR U. SAN AGUSTIN**, as **Director of Guam Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

SECOND CHARGE

On or about June 30, 2021 to present, inclusive, in Guam, **ARTHUR U. SAN AGUSTIN**, as **Director of the Guam Department of Public Health and Social Services**, did commit the offense of ***Obstructing Governmental***

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Functions (As a Misdemeanor), in that he intentionally obstructed, impaired, or perverted the administration of law or other governmental function by breach of official duty, in violation of 9 GCA § 55.45.

***SPECIAL ALLEGATION
Crime Against the Community***

On or about the period between June 30, 2021 to present, inclusive, **ARTHUR U. SAN AGUSTIN, Director of the Guam Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

THIRD CHARGE

On or about the period between June 30, 2021 to present, inclusive, in Guam, **ARTHUR U. SAN AGUSTIN, Director of the Guam Department of Public Health and Social Services**, did commit the offense of ***Official Misconduct (As a Misdemeanor)***, in that, with intent to benefit himself or another person or to deprive another person of a benefit, he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office, in violation of 9 GCA § 49.90(b).

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SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, inclusive, **ARTHUR U. SAN AGUSTIN, as Director of the Guam Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

FOURTH CHARGE

On or about June 30, 2021 to present, inclusive, in Guam, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did commit the offense of ***Obstructing Governmental Functions (As a Misdemeanor)***, in that he intentionally obstructed, impaired, or perverted the administration of law or other governmental function by breach of official duty, in violation of 9 GCA § 55.45.

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, inclusive, **MASATOMO NADEAU as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did knowingly take action regarding

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government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

FIFTH CHARGE

On or about the period between June 30, 2021 to present, inclusive, in Guam, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did commit the offense of ***Official Misconduct (As a Misdemeanor)***, in that, with intent to benefit himself or another person or to deprive another person of a benefit, he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office, in violation of 9 GCA§ 49.90(b).

SPECIAL ALLEGATION
Crime Against the Community

On or about the period between June 30, 2021 to present, inclusive, **MASATOMO NADEAU, as Chief Environmental Health Officer, Division of Environmental Health, Department of Public Health and Social Services**, did knowingly take action regarding government services in such a way that: (1) doing so creates a threat to the public health and safety, in violation of 9 GCA § 43.31(a)(1).

Dated this 3 day of July 2023.

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OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General of Guam

/s/
GLORIA ANN L. RUDOLPH
Assistant Attorney General,
Government Corruption Division

A TRUE BILL

/s/
FOREMAN FOR THE
GRAND JURY

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**APPENDIX I — NOTICE OF APPEAL OF
THE SUPERIOR COURT OF GUAM,
FILED OCTOBER 24, 2024**

IN THE SUPERIOR COURT OF GUAM

Criminal Case No. CF0446-23, CRA24-023

PEOPLE OF GUAM,

Plaintiff-Appellant,

vs.

ARTHUR U. SAN AGUSTIN;
MASATOMO NADEAU,

Defendants-Appellees.

Notice of Appeal

**TO THE CLERK OF THE SUPERIOR COURT OF
GUAM:**

Pursuant to Guam Rules of Appellate Procedure, Notice is hereby given that the PEOPLE OF GUAM, plaintiff in the above-named case, hereby appeal to the Supreme Court of Guam from the October 18, 2024 Order for Dismissal entered in this matter, which dismissed this case with prejudice for lack of appointment of a special prosecutor after disqualification of the entire Office of the Attorney General as the People of Guam's elected public prosecutor. A copy of the October 18, 2024 Order for Dismissal is attached as Exhibit 1.

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Respectfully submitted this 23rd day of October, 2024.

**OFFICE OF THE ATTORNEY
GENERAL
Douglas B. Moylan, Attorney
General**

/s/ Nathan M. Tennyson
Nathan M. Tennyson
Acting Deputy Attorney General
Counsels for Plaintiff-Appellant

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EXHIBIT 1

IN THE SUPERIOR COURT OF GUAM

CRIMINAL CASE NO. CF0446-23

PEOPLE OF GUAM,

Plaintiff,

vs.

ARTHUR U. SAN AGUSTIN

(D.O.B.: 01/01/1965),

MASATOMO NADEAU

(D.O.B.: 10/24/1968),

Defendants.

ORDER FOR DISMISSAL

This matter came before the Honorable John C. Terlaje on September 6, 2024 pursuant to a Motion for Reconsideration and was decided on the briefs, without oral argument. Attorney Joaquin Arriola (“J. Arriola”) and Attorney William B. Brennan (“Brennan”) represent Defendant San Agustin and Attorney G. Patrick Civile (“Civille”) represents Defendant Nadeau. The People remain unrepresented as Attorney General Douglas Moylan has been Disqualified and no special prosecutor has been appointed.

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On July 1, 2024, this Court issued a Decision and Order granting Defendants' Motions to Disqualify the Office of the Attorney General. *See* Decision and Order (Motions to Disqualify), Jul. 1, 2024. The Court ordered that "the Government of Guam must secure the services of a special prosecutor to handle this matter... independent from the...oversight of the Office of the Attorney General." The Court ordered that this appointment be made within thirty (30) days of the filing of the Order, or "the matter will be dismissed in its entirety."

On July 11, 2024, the People filed their Motion for Reconsideration of the July 1, 2024, Decision and Order. People's Mot. for Recons. of the July 1, 2024, Decision & Order (Jul. 11, 2024). Defendant San Augustin filed an Opposition on July 26, 2024. Defs Opp'n to OAG's Mot. to Recons. July 26, 2024, Decision & Order (Jul. 26, 2024). Defendant Nadeau joined in the Opposition on the same day. Def. Nadeau's Joiner in Arthur San Agustin's Opp'n to OAG's Mot. to Recons. July 1, 2024, Decision & Order (Jul. 26, 2024).

The Court issued a Decision and Order on the Motions to Reconsider on September 6, 2024, denying the People's Motion to Reconsider and reaffirming the decision of the previous Decision and Order on the Defendants' Motions to Disqualify the Office of the Attorney General.

The People failed to comply with the Court's orders to appoint a special prosecutor within thirty (30) days of the Decision and Order on the Motions to Reconsider. While the People did file a Verified Petition for Permission to

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Appeal with the Supreme Court of Guam on October 4, 2024, the People did not file a Motion to Stay the Order to appoint a special prosecutor. Therefore, based on the People's failure to adhere to the aforementioned order, the Court dismisses this case with prejudice.

**IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED AS FOLLOWS:**

1. That the above-captioned matter be DISMISSED WITH PREJUDICE.
2. That any release conditions currently placed on all Defendants be VACATED.

SO ORDERED, this 15 day of October 2024.

/s/ John C. Terlaje
HON. JOHN C. TERLAJE
Judge, Superior Court of
Guam

**APPENDIX J — ORDER OF THE SUPREME COURT
OF GUAM, FILED JANUARY 15, 2026 IN PEOPLE
OF GUAM V. RICHARD Y. YBANEZ, ET. AL.,
SUPREME COURT OF GUAM CASE NO. CRA24-024**

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff-Appellant,

vs.

RICHARD Y. YBANEZ, JENNIFER BADAR CRUZ,
ALEJO C. SABLAN, KEVIN J.T. SUSUICO,
AND ANTHONY P. CHARGUALAF,

Defendants-Appellees.

Supreme Court Case No. CRA24-024
Superior Court Case No. CF0447-23

ORDER

This matter comes before the court upon the motion to dismiss this appeal, or in the alternative, to disqualify the Office of the Attorney General (“OAG”), filed by Defendants-Appellees Alejo C. Sablan, Richard Y. Ybanez, Jennifer Badar Cruz, and Anthony P. Chargualaf (collectively, “Appellees”), and the Opposition filed by Plaintiff-Appellant People of Guam (“People”).¹ *See*

1. *See* Ybanez’s Joinder in Sablan’s Mot. Dismiss, Mot. Disqual. OAG (July 22, 2025); Chargualaf’s Joinder in Sablan’s Mot. Dismiss, Mot. Disqual. OAG (July 22, 2025); Cruz’s Joinder in Sablan’s Mot. Dismiss, Mot. Disqual. OAG (July 22, 2025). Defendant-Appellee Kevin J.T. Susuico did not join.

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Sablan’s Mot. Dismiss, Mot. Disqual. OAG at 1-11 (July 18, 2025); Appellant’s Mem. Resp. Mot. Dismiss, Mot. Disqual. OAG (Aug. 14, 2025).

The People appeal from the Superior Court’s order dismissing the case with prejudice due to violation of Appellees’ statutory right to a speedy trial. The People’s opening brief identified three issues: (1) whether the trial court failed to account for the Organic Act and Guam law when applying the Guam Rules of Professional Conduct (“GRPC”); (2) whether disqualifying “each and every” Assistant AG was error; and (3) whether the court erred in dismissing the indictment with prejudice. Appellant’s Br. at 4 (June 6, 2025). Sablan thereafter moved to dismiss and disqualify the OAG, arguing that the OAG waived its challenge to the dismissal below, and that “[t]he OAG cannot and could not represent the People of Guam after its disqualification . . . without a stay ordered or interlocutory appeal accepted by this Court.” Mot. Dismiss at 1-8. Given the pending motions, this court vacated the scheduled oral argument. Order at 1 (July 31, 2025).

The People’s reply brief focused primarily on disqualification and did not materially expand the speedy-trial argument, instead asserting that the dismissal issue had been raised in the opening brief. Appellant’s Reply Br. at 4 (Aug. 7, 2025). Only in response to Sablan’s motion to dismiss did the People file a separate memorandum substantially developing their argument that the trial court abused its discretion in dismissing the indictment with prejudice. Appellant’s Mem. Resp. Mot. Dismiss at 3-4.

*Appendix J***A. The People’s Challenge to the Dismissal Below Is Sufficiently Briefed to Permit Appellate Review**

Under Guam Rule of Appellate Procedure (“GRAP”) 13(a)(9), the arguments in an appellant’s opening brief must contain “the contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies.” Failure to raise an issue or to support it with argument and authority in the opening brief may result in forfeiture of that issue on appeal, though this court retains discretion to consider forfeited issues. *See People v. Quinata*, 2023 Guam 25 ¶ 32 (citing *People v. Borja*, 2017 Guam 20 ¶ 28); *Estate of Concepcion v. Siguenza*, 2003 Guam 12 ¶ 11. Forfeiture, in this context, arises from neglect, whereas waiver is the intentional relinquishment of a known right; waived issues may not be reviewed, but forfeited issues may be addressed in this court’s discretion. *Quinata*, 2023 Guam 25 ¶ 32 n.4.

These authorities emphasize two related principles: (1) appellants must do more than simply list an issue—they must provide some explanation and supporting authority; and (2) even when briefing is inadequate, this court may choose to reach a forfeited issue where fairness, clarity in the law, or the integrity of judicial proceedings so require. This court has dismissed appeals or refused to consider arguments where the opening brief failed entirely to raise the issue or presented no meaningful argument. *See RSA-Tumon, LLC v. Pitt Cnty. Mem’l Hosp., Inc.*, 2023 Guam 8 ¶ 23; *Concepcion*, 2003 Guam 12 ¶ 11; *Macris v. Richardson*, 2010 Guam 6 ¶ 8.

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Here, the Superior Court’s dismissal with prejudice is the final judgment from which this appeal is taken under 8 GCA § 130.20(a)(5). Although the People’s discussion of the dismissal is underdeveloped, the opening brief identified, as its third issue, whether the trial court erred when it dismissed the case with prejudice, and cited 8 GCA §§ 80.60 and 80.70 as well as portions of the record describing the timeline from indictment to dismissal. *See* Appellant’s Br. at 4, 46-49. Appellees responded on the merits of the statutory speedy-trial issue, and the People developed their dismissal arguments in their memorandum opposing the motion to dismiss. *See* Mot. Dismiss at 6 (“OAG eventually appealed from the Superior Court’s dismissal”); Appellant’s Mem. Resp. Mot. Dismiss at 3-4; Sablan’s Reply to OAG Opp’n Mot. Dismiss at 3-4 (Aug. 21, 2025).

Having considered the motion, joinder, opposition, the record on appeal, and the applicable law, we conclude that the People’s challenge to the Superior Court’s dismissal order—though minimally briefed—is sufficiently presented to permit appellate review and has been neither waived nor forfeited. We deny Appellees’ motion to dismiss this appeal on the ground that the OAG’s challenge to the dismissal is unreviewable; however, that does not end the analysis.

*Appendix J***B. Prosecution of This Appeal is Prospectively Conditioned on the Appearance of Conflict-Free Substitute Counsel**

The Superior Court disqualified the entire OAG from prosecuting this matter based on an unwaivable conflict under GRPC 1.7 and ordered the appointment of a special prosecutor within 30 days. Record on Appeal (“RA”), tab 203 at 15-17 (Dec. & Order (Mot. Disqual., Apr. 25, 2024)); RA, tab 204 at 1 (Order, Apr. 25, 2024). The OAG did not obtain a stay of that disqualification order, and no interlocutory appeal of that order has been accepted by this court. Unless the Superior Court’s disqualification order is overturned, it is presumed valid and must be given effect. In these circumstances, we cannot simply ignore the Superior Court’s order and allow a disqualified office to continue as counsel of record in this court.

This court has the inherent authority to regulate its practice, enforce compliance with its rules and orders, and impose sanctions—including dismissal of an appeal—when a case is not prosecuted in accordance with applicable law or our rules. *See* 48 U.S.C.A. § 1424-1(a)(6); *see also* Guam R. App. P. 27(a), 32; 7 GCA § 3108(c)(2). Exercising this authority, and out of deference to the Superior Court’s disqualification order, we conclude that the OAG may not prosecute this appeal while that order remains in effect.

In the interest of justice, we prospectively condition further proceedings in this appeal on the appearance of conflict-free substitute counsel. Within 30 days of this Order, conflict-free counsel not subject to the Superior

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Court's disqualification order must enter an appearance on behalf of the People to prosecute this appeal. If no such appearance is entered within that time, this court will dismiss the appeal.

This Order does not strike any briefs filed to date or authorize supplemental briefing as of right. The existing briefs and record on appeal remain on file and will be considered in the ordinary course once conflict-free substitute counsel has appeared. Nothing in this Order resolves the merits of the disqualification issue, which remains part of the appeal.

The motion to dismiss is **DENIED**. Prosecution of this appeal is prospectively conditioned on the timely appearance of conflict-free substitute counsel for the People as stated above.

SO ORDERED this 15th day of January 2026.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice