

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

ORDER
re Amended Substitution of Counsel

On April 26, 2013, a Motion to Substitute Attorney¹ was filed by the Government of Guam. *See* ECF No. 1045. On May 3, 2013, the court disapproved the Motion to Substitute Attorney because it did not comply with the technical requirements of Local Rule GR 19.1(b)(1). *See* ECF No. 1047. The court also directed the Government of Guam to justify the need to substitute counsel at this time. *Id.* at 2.

In response to the court’s Order, on May 10, 2013, the Government of Guam filed an Amended Substitution of Counsel (the “Amended Substitution”), seeking to substitute as its counsel of record the law firm of Cabot Mantanona, LLP for and in place of the Office of the Attorney General (the “Attorney General”). *See* ECF No. 1052. The Government of Guam stated that the Amended Substitution was filed pursuant to Local Rule GR 19.1(b)(2). Regardless of whether the

¹ The document was captioned “Substitution of Counsel” but electronically filed by counsel as a “Motion to Substitute Attorney.”

1 substitution of counsel is being sought under GR 19.1(b)(1) or (2), the Local Rules are clear that all
2 substitutions of counsel are contingent on court approval. In determining whether to approve a
3 substitution of counsel, the court considers many factors, including but not limited to the effect the
4 substitution may have on established deadlines and whether substitution is being sought as a delay
5 tactic.

6 The Amended Substitution asserts that a conflict of interest has arisen between a former
7 client of the Attorney General (*i.e.*, the court-appointed Receiver) and a current client (the
8 Government of Guam through the Office of the Governor of Guam) which necessitates a substitution
9 of counsel under Rules 1.7 and 1.9 of the Guam Rules of Professional Conduct. According to the
10 Amended Substitution, “the federal Receiver is a former client” of the Attorney General because the
11 Attorney General “provid[ed] legal services to and on behalf of the Receiver” “in the underlying land
12 condemnation case² before the Superior Court” of Guam. *See* Amended Substitution, ECF No. 1052,
13 at 7. It is alleged that the Receiver and the Office of the Governor of Guam “disagree[] . . . over the
14 mechanism for payment of the Judgment and the \$25 million just compensation award.” Decl.
15 Raymond Tenorio, ECF No. 1053, at ¶4. The Amended Substitution contends that this
16 “disagreement between the Receiver and the Office of the Governor . . . precludes . . . the Attorney
17 General from continuing to represent the Office of the Governor in this matter.” *See* Amended
18 Substitution, ECF No. 1052, at 8.

19 The Amended Substitution appears to repeat the mistaken notion that the Receiver is a former
20 client of the Attorney General because the Receiver was represented by the Attorney General in the
21 Layon Condemnation Case. This is simply incorrect. The Government of Guam – not the Receiver
22 – exercised its eminent domain authority and initiated the Layon Condemnation Case. This occurred
23 in January 2008, prior to the appointment of the Receiver in March 2008. The Attorney General
24

25 ² *Government of Guam v. 1,348,474 Square Meters, More or Less*, Superior Court of Guam
26 Civil Case No. CV0085-08 (the “Layon Condemnation Case”). On December 10, 2012, judgment
27 in the approximate amount of \$25 million issued in the Layon Condemnation Case. *See* Decl. Benita
Manglona, ECF No. 1054, at ¶4.

1 acknowledges that it represented *the Government of Guam* in the Layon Condemnation Case, not
2 the Receiver. *See* Acknowledgment, ECF No. 1057, at ¶3. While the Receiver may have
3 participated in and assisted with certain aspects of the litigation, the Government of Guam was the
4 named party to that suit, not the Receiver. Thus, it is improper to assert or imply that such
5 participation somehow converted the Receiver into the client in that case. For the record, the
6 Receiver was never a party to the Layon Condemnation Case nor was the Receiver a party to this
7 action. The only party involved in both lawsuits is the Government of Guam.

8 In its appointment order, the court vested the Receiver “with the power and authority . . . to
9 perform all acts . . . deem[ed] necessary to achieve expeditious compliance with the Consent
10 Decree.” *See* Order (Mar. 17, 2008), ECF No. 239, at 15. The Receiver was ordered to assume “all
11 of the responsibilities, functions, duties, powers and authority of the Solid Waste Management
12 Division of the Department of Public Works” which included the supervision of Government of
13 Guam employees, the performance of existing contracts and entering into future contracts, the hiring
14 of consultants and other professionals, and the facilitation of financing. *Id.* at 15-16. In essence, the
15 Receiver works on behalf of the Government of Guam to ensure the government’s expeditious
16 compliance with the Consent Decree.

17 The Amended Substitution also claims that the Government of Guam and the Attorney
18 General have “inconsistent positions between them with respect to the course of litigation and the
19 litigation strategies involved in this action.” Amended Substitution, ECF No. 1052, at 3. Based on
20 what has been presented, the court finds that the assertions concerning the existence of the conflict
21 over “litigation strategy relating to the Consent Decree” is indeed reflective of the limited dispute
22 between the Attorney General and the Office of the Governor. This dispute is on the issue of
23 whether the Consent Decree Bonds³ should be used to satisfy the \$25 million judgment ordered by
24

25 ³ The Government of Guam issued the Government of Guam Limited Obligation (Section
26 30) Bonds, Series 2009A in the amount of more than \$200 million in order to fund the costs
27 associated with compliance with the Consent Decree. *See* Decl. Benita Manglona, ECF No. 1054,
at ¶5.

1 the Superior Court of Guam in the Layon Condemnation Case.

2 To the extent that such a dispute between the Attorney General and the Office of the
3 Governor exists, the court will approve the Government of Guam's Amended Substitution only for
4 the limited purpose of allowing the law firm of Cabot Mantanona, LLP to represent the Government
5 of Guam with regard to the issues raised in the Former Landowners' Motion to Intervene.⁴ If, at the
6 status hearing scheduled for May 21, 2013, issues concerning the Motion to Intervene or the use of
7 the Consent Decree Bonds to pay the Layon Condemnation Case judgment arise, the court will
8 permit the law firm of Cabot Mantanona, LLP to address the court and represent the Government
9 of Guam's position as to those matters. However, for all other purposes, the Attorney General shall
10 remain counsel of record for the Government of Guam.

11 As stated previously, the Attorney General has represented the Government of Guam in this
12 action for more than nine (9) years.⁵ The Attorney General is intimately aware of the various issues
13 in this multi-faceted case. The Office of the Attorney General has valuable institutional knowledge,
14 having worked with the United States Environmental Protection Agency, many government
15 agencies, bond counsel and the Receiver over the past five (5) years to bring the Government of
16 Guam into compliance with the Consent Decree. With the opening of the Layon Landfill and the
17 final design plans for the closure of the Ordot Dump awaiting approval, the finish line is in sight.
18 There will soon be an end to an era of non-compliance by the Government of Guam. The court is

19 ///

20 ///

22 ⁴ On April 10, 2013, a Motion to Intervene was filed by Former Landowners of the Layon
23 Landfill. *See* ECF No. 1031. The motion identified these "Former Landowners" as Oxford
24 Properties & Finance, Ltd., Joaquin C. Arriola, Douglas Cushnie, Calvo's Insurance Underwriters,
25 Inc., Jones & Guerrero Company, Inc., Alfred C. and Diana Z. Ysrael, and Lee M. Holmes.
26 Thereafter joinders to the Motion to Intervene were filed by Valencia Investments Corporation and
27 Young Chull Kim. *See* ECF Nos. 1037 and 1041.

⁵ This case has been pending in this court for over 11 years, and the Consent Decree was
filed more nine (9) years ago.

1 preparing to end the federal receivership and hand control over the Solid Waste Management
2 Authority to the Board. The court and the public will not tolerate any derailment or delay to this
3 progress.

4 IT IS SO ORDERED.



5 /s/ Frances M. Tydingco-Gatewood
6 Chief Judge
7 Dated: May 16, 2013
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27