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Supreme Court of Guam, Clerk of Court

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**IN THE SUPREME COURT OF GUAM**

<b>IN RE:</b>	)	Supreme Court Case No. CRQ24-001
	)	
<b>REQUEST OF LOURDES A. LEON</b>	)	
<b>GUERRERO, IMAGA' HAGAN</b>	)	
<b>GUAHAN, RELATIVE TO THE</b>	)	
<b>DUTIES OF THE ATTORNEY</b>	)	<b>AMENDED ORDER<sup>1</sup></b>
<b>GENERAL OF GUAM TO</b>	)	
<b>EXECUTIVE BRANCH AGENCIES.</b>	)	
	)	

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This matter comes before the court upon the filing of a Request for Declaratory Judgment by *I Maga'hågan Guåhan* Lourdes A. Leon Guerrero (“the Governor”), on March 14, 2024. Her request concerns the responsibilities of the Attorney General of Guam to Executive Branch agencies under the Organic Act of Guam and the laws of Guam.

**I. JURISDICTION**

In addition to having original jurisdiction over proceedings necessary to protect our appellate jurisdiction, the Organic Act grants the Supreme Court of Guam original jurisdiction “as the laws of Guam may provide.” 48 U.S.C.A. § 1424-1; *In re Leon Guerrero*, 2023 Guam 11 ¶ 21. We have original jurisdiction over declaratory judgment actions regarding “the interpretation of any law, federal *or* local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of [*I Maga'håga*] and the operation of the Executive Branch . . . .” 7 GCA § 4104 (2005); *In re Leon Guerrero*, 2021 Guam 6 ¶ 8; *In*

<sup>1</sup> This Amended Order corrects typographical errors in the original order issued on April 2, 2024. No other amendments have been made to the original order.

1 *re Request of Calvo Relative to Interpretation & Application of Organic Act Section 1423b &*  
2 *What Constitutes Affirmative Vote of Members of I Liheslaturan Guahan (“In re Calvo”), 2017*  
3 *Guam 14 ¶ 5.*

4 Under 7 GCA § 4104, this court has the power to issue declaratory judgments at the request  
5 of the Governor if certain conditions are met.

6 [T]o pass jurisdictional muster, a party seeking a declaratory judgment must satisfy  
7 three requirements: (1) the issue raised must be a matter of great public importance;  
8 (2) the issue must be such that its resolution through the normal process of law is  
9 inappropriate as it would cause undue delay; and (3) the subject matter of the  
inquiry is appropriate for section 4104 review.

10 *In re Request of Gutierrez, 2002 Guam 1 ¶ 9.*

## 11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 On February 28, 2024, Attorney General Douglas B. Moylan (the “AG”) sent notices to  
13 twenty-two Executive Branch agencies (“22 agencies” or “the agencies”) of the Government of  
14 Guam, notifying them that he was “temporarily withdrawing” from representing them due to a  
15 potential conflict of interest between his representation of the agencies and his statutory role as  
16 Public Prosecutor. *Req. Declaratory J. at 3.* This apparent conflict has already arisen in criminal  
17 cases where the Office of the Attorney General (“OAG”) allegedly gave legal advice to some of  
18 these agencies and then prosecuted officials of those same agencies for the matters about which  
19 they consulted with the OAG. *Id.*

20 In his letters to each of the 22 agencies, the AG stated that the Guam Rules of Professional  
21 Conduct (“GRPC”) may not apply to the OAG the way they apply to private attorneys. *Req.*  
22 *Declaratory J. at 4.* Therefore, the AG stated he will not implement ethical screens to protect  
23 against potential conflicts nor will he appoint a special prosecutor.<sup>2</sup> *Id.*

24 Following these letters, the Speaker of the 37th Guam Legislature called an emergency  
25 session and the Governor called for two special sessions to address the issues that arose from the

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28 <sup>2</sup> The AG’s language suggests that he has the ability to appoint a special prosecutor; we decline to address  
the merits of this assertion.

1 AG’s withdrawals. *Id.* No legislation addressing the issue has been passed. On March 14, 2024,  
2 the Governor filed a petition in this court under 7 GCA § 4104 seeking declaratory judgment on  
3 several questions related to the AG’s conduct. *Id.* at 25-26.

4 The Governor argues that the AG “may not simply ‘temporarily’ refuse to perform the  
5 only function the Organic Act has assigned to him and leave agencies to fend for themselves.”  
6 *Id.* at 5-6. She requests this court issue a judgment declaring: (1) The Attorney General of Guam  
7 may not withdraw from legal representation of Executive Branch agencies, or otherwise decline  
8 to provide legal services to these agencies, on the basis that the representation conflicts with his  
9 duties as Public Prosecutor; (2) In the event the OAG receives a claim or complaint against an  
10 agency official for actions performed in the course of the official’s employment or related to the  
11 official’s employment with the agency, the Attorney General shall implement conflict of interest  
12 protocols consistent with the Guam Rules of Professional Conduct; (3) If the Attorney General  
13 failed to implement conflict of interest protocols prior to initiating civil and criminal  
14 investigations into agency actions, the Attorney General is disqualified from representing  
15 government agencies in any matter related to the investigations, and from participating in or  
16 supervising investigations or prosecutions related to such matters; and (4) Agencies the Attorney  
17 General is investigating without having implemented conflict of interest protocols are permitted  
18 to employ or contract with an attorney for the provision of legal services to their agencies, and the  
19 Attorney General is required to pay for such services.<sup>3</sup> *Id.* at 38-39.

20 The OAG filed a response to the Governor’s Request for Declaratory Judgment, arguing  
21 this court does not have jurisdiction to consider the Governor’s questions and that the Governor’s  
22 Request should be dismissed. Mem. Lack Jurisdiction at 20 (Mar. 21, 2024). Simultaneously,  
23 the OAG filed a response to the Governor’s Emergency Motion for Expedited Briefing and  
24 Argument Schedule, stating that the Governor “fails to cite with particularity a cognizable basis  
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28 <sup>3</sup> The Governor’s Prayer for Relief does not perfectly mirror the questions certified to this court.

1 for this Court’s extraordinary attention.” Resp. Emergency Mot. Expedited Br. at 1 (Mar. 21,  
2 2024).

3 The Governor filed a reply brief, reasserting that “this case satisfies 7 GCA § 4104 and  
4 presents a matter of great public interest.” Pet’r’s Reply at 28 (Mar. 26, 2024). Additionally, the  
5 Governor reasserted the need for expedited briefing “to avoid irreparable harm to Petitioner and  
6 other affected Executive Branch Agencies” due to AG Moylan’s withdrawal of legal  
7 representation from those agencies. Reply Supp. Emergency Mot. Expedited Br. at 2 (Mar. 26,  
8 2024).

### 9 III. ANALYSIS

10 In response to the AG’s actions, the Governor seeks a declaratory judgment answering  
11 four independent questions certified to this court.<sup>4</sup> In the Governor’s reply, she says the primary  
12 question is “whether the Attorney General of Guam may withdraw from representing Executive  
13 Branch agencies, an Organic Act role, when he claims such representation conflicts with ongoing  
14 investigations or prosecutions, a role established by Guam law.” Pet’r’s Reply at 7-8. She  
15 provides some clarification that “[t]he remaining questions are follow up inquiries to determine  
16 rights, requirements, and limitations of agencies and the Office of the Attorney General based on  
17 the determination of the primary question.” *Id.* at 8. The four independent questions certified to  
18 this court are:

- 19 1. May the Attorney General of Guam withdraw from legal representation of an Executive  
20 Branch agency, or otherwise decline to provide legal services to such agency, when the  
21 Attorney General claims such representation conflicts with ongoing investigations or  
22 prosecutions?
- 23 2. May the Attorney General provide legal services to the agency, notwithstanding his access  
24 to confidential information from both the agency and the investigations and prosecutions?

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25 <sup>4</sup> Paragraph 47 poses five questions, but questions (b) and (e) ask similar versions of the same question about  
26 an agency’s ability to hire outside counsel. The Governor’s Prayer for Relief and legal positions also suggest  
27 additional subparts to certain of these questions; however, we can properly exercise our original jurisdiction to  
28 interpret the statutes that relate to the alleged actions of the AG without needing to make the factual determination  
those statutes were violated in any specific case. *See In re Tax Trust Fund*, 2014 Guam 15 ¶ 54 (finding it appropriate  
to “interpret the statute as it relates to the alleged actions of the Governor” but declining to “opine on whether the  
Governor . . . violated . . . provisions [of the statute] in fact”).

- 1 3. Is the Attorney General required to implement conflict protocols consistent with the Guam  
2 Rules of Professional Conduct including, but not limited to, an ethical screen or  
3 assignment of investigations or prosecutions of agency officials to an independent Special  
4 Prosecutor?  
5 4. If the Attorney General withdraws from representing an agency—or is otherwise unable  
6 to provide legal services to the agency—may the agency employ or procure the services  
7 of an attorney independent from the Attorney General to perform legal services for the  
8 agency, including review and approval of agency contracts as to legality and form?

9 *See* Req. Declaratory J. at 27-28, 33, 35, 37-38.

10 The court must now determine whether the Governor’s four questions meet the  
11 jurisdictional requirements of 7 GCA § 4104.

### 12 **A. Great Public Interest**

13 “Public interest signifies an importance of the issue to the body politic, the community, in  
14 the sense that the operations of the government may be substantially affected one way or the other  
15 by the issue’s resolution.” *In re Leon Guerrero*, 2021 Guam 6 ¶ 15 (quoting *In re Request of*  
16 *Gutierrez*, 2002 Guam 1 ¶ 26 (alterations removed)). Further, a “great public interest” requires  
17 that “the issue presented must be significant in substance and relate to a presently existing  
18 governmental duty borne by the branch of government that requests the opinion.” *In re Request*  
19 *of Gutierrez*, 2002 Guam 1 ¶ 26. We have found that issues “of consequence in terms of  
20 governmental function and resources” inherently indicate public interest. *In re Request of*  
21 *Gutierrez*, 1996 Guam 4 ¶ 6 (finding “great public interest” in a case involving the Department  
22 of Education because it is “one of the largest Departments in Guam’s Government and has a  
23 mission that directly impacts on nearly every family on the island” and “extensive government  
24 resources” were involved).

25 Resolution of these questions will substantially affect government function since the  
26 OAG’s withdrawal threatens to leave 22 Executive Branch agencies without legal services to  
27 perform essential functions. Provision of competent legal services to the Executive Branch is of  
28 great public concern and it is necessary for the 22 agencies have legal representation to advise  
and defend public officials, review and approve public contracts, and maintain the uninterrupted  
operation of the agencies. These questions relate to a “presently existing governmental duty borne

1 by the branch of Government requesting the opinion” because the Governor alleges the AG’s  
2 actions impinge on her general management of the executive branch. *See In re Request of*  
3 *Gutierrez*, 2002 Guam 1 ¶ 26.

4 The ability of the AG to represent the public’s interest is also of great importance to the  
5 community. It is important for the public to know that the OAG operates fairly and ethically  
6 without compromise of the AG’s dual role as legal officer and chief prosecutor.

7 Thus, the public has a great interest in both positions: (1) the ability of executive agencies  
8 to function and operate, and (2) the ability of the AG to represent the interests of the public. This  
9 requirement is satisfied for all four questions.

#### 10 **B. Undue Delay**

11 Under 7 GCA § 4104, a declaratory judgment may be issued “only where the normal  
12 process of law would cause undue delay.” *In re Calvo*, 2017 Guam 14 ¶ 11 (quoting *In re Tax*  
13 *Trust Fund*, 2014 Guam 15 ¶ 25). Section 4104 “was intended to provide a fast track for the  
14 initiation of cases before the Supreme Court of Guam so that rulings could be obtained on  
15 important issues of law without time consuming litigation in the inferior court.” *In re Gutierrez*,  
16 1996 Guam 4 ¶ 8. Because there is no “bright line demarcation,” undue delay is analyzed using  
17 a two-element test, requiring this court to “(1) measure the delay relative to the time that would  
18 be consumed by litigating the issue through the ‘normal process of law’ and (2) determine whether  
19 this delay is ‘excessive or inappropriate.’” *In re Leon Guerrero*, 2021 Guam 6 ¶ 17 (quoting *In*  
20 *re Calvo*, 2017 Guam 14 ¶ 11).

21 We find the undue delay prong is met for each of the four questions. For question 1,  
22 forcing each individual agency to file a collateral action to determine whether the AG can  
23 withdraw from representing them would result in time-consuming piecemeal litigation—and  
24 potentially inconsistent decisions. Contrary to the AG’s arguments, there is great uncertainty on  
25 if and when the propriety of the AG’s withdrawal will be discussed in the “related” cases he  
26 references. *See In re Leon Guerrero*, 2023 Guam 11 ¶ 28. Questions 2, 3, and 4 are unlikely to  
27 be answered in the normal process of law, except by filing a declaratory action. Forcing the  
28 Governor or some autonomous agency to bring a separate declaratory action later would mandate

1 an arbitrary delay in resolution of these questions, which is “excessive or inappropriate.” As it is  
2 unlikely for these questions to be resolved through the normal process of law outside of a  
3 declaratory action, expedited resolution of these questions under § 4104 is appropriate.

#### 4 **C. Appropriate Subject Matter**

5 We have held that the subject matter requirement should be read disjunctively, permitting  
6 “the Governor to ask the Supreme Court for: (1) an interpretation of an existing law that is within  
7 its jurisdiction to decide; *or* (2) an answer to any question affecting h[er] powers and duties as  
8 governor and the operation of the executive branch.” *In re Calvo*, 2017 Guam 14 ¶ 14 (quoting  
9 *In re Request of Gutierrez*, 2002 Guam 1 ¶ 11). When faced with declaratory actions seeking to  
10 determine the duties of their Attorneys General, other jurisdictions have held that “declaratory  
11 relief is particularly appropriate to determine the statutory duties of a public officer.” *Brown v.*  
12 *Oregon State B.*, 648 P.2d 1289, 1293 (Or. 1982); *see also Martin v. Thornburg*, 359 S.E.2d 472,  
13 473 (N.C. 1987) (declaratory judgment action to determine rights and duties of Governor and  
14 Attorney General in connection with lawsuits filed against State); *Woodahl v. State Hwy.*  
15 *Comm’n*, 465 P.2d 818, 818 (Mont. 1970) (original proceeding seeking declaratory judgment to  
16 determine “powers, duties and responsibilities” of attorney general in hiring attorneys).

17 We find this prong is met for each of the four questions. Question 1 both raises an issue  
18 that impacts the operation of the Executive Branch and asks this court to interpret existing law  
19 that is within our jurisdiction to decide. Questions 2, 3, and 4 also ask this court to interpret local  
20 law, which satisfies this prong. *See In re Leon Guerrero*, 2023 Guam 11 ¶ 29.

#### 21 **IV. CONCLUSION**

22 Questions 1, 2, 3, and 4 satisfy 7 GCA § 4104’s jurisdictional test, and so we shall consider  
23 them further. For clarity, the specific questions on which we invite briefing are:

- 24 1. May the Attorney General of Guam withdraw from legal representation of an Executive  
25 Branch agency, or otherwise decline to provide legal services to such agency, when the  
26 Attorney General claims such representation conflicts with ongoing investigations or  
prosecutions?
- 27 2. May the Attorney General provide legal services to the agency, notwithstanding his access  
28 to confidential information from both the agency and the investigations and prosecutions?

- 1 3. Is the Attorney General required to implement conflict protocols consistent with the Guam  
2 Rules of Professional Conduct including, but not limited to, an ethical screen or  
3 assignment of investigations or prosecutions of agency officials to an independent Special  
4 Prosecutor?  
5 4. If the Attorney General withdraws from representing an agency—or is otherwise unable  
6 to provide legal services to the agency—may the agency employ or procure the services  
7 of an attorney independent from the Attorney General to perform legal services for the  
8 agency, including review and approval of agency contracts as to legality and form?<sup>5</sup>

9 On briefing, 7 GCA § 4104 provides that this court “*shall*, pursuant to its rules and  
10 procedure, permit interested parties to be heard on the questions presented.” Under Guam Rule  
11 of Appellate Procedure (GRAP) 2, the court suspends the provisions of GRAP 14(a), and  
12 **ORDERS** that any interested parties—including Government of Guam branches, agencies, or  
13 instrumentalities—must move for permission to file an amicus brief by **April 5, 2024**. See Guam  
14 R. App. P. 2, 14(a), 14(b).

15 Briefing will proceed as follows:

16 The Governor shall file and serve her brief by **April 15, 2024**.

17 The Attorney General shall serve and file his brief by **April 29, 2024**.

18 The Governor may file and serve a reply brief by **May 6, 2024**.

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27 <sup>5</sup> The Governor’s Question implies that she is seeking clarification on whether independent counsel can  
28 satisfy the statutory requirements of the AG as to contracts and other legal services. In addressing Question 4, the  
parties should address whether an independent attorney’s approval of contracts and performance of other legal  
services would satisfy the statutory requirements that call for the Attorney General’s approval. Additionally, we note  
that although we certify the majority of the Governor’s Question on this point, we decline to determine who must  
pay for the legal services provided to an agency.



1 Oral argument will be heard on **Monday, May 20, 2024, at 10:00 a.m.** in the Monessa G.  
2 Lujan Appellate Courtroom before the panel of Chief Justice Robert J. Torres, Associate Justice  
3 F. Philip Carbullido, and Associate Justice Katherine A. Maraman. A status conference will be  
4 held on **Tuesday, April 23, 2024, at 9:00 a.m.** in the Supreme Court Virtual Courtroom.

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6 **SO ORDERED** this 2nd day of April, 2024.

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 */s/*  
10 **F. PHILIP CARBULLIDO**  
11 **Associate Justice**

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13 **KATHERINE A. MARAMAN**  
14 **Associate Justice**

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18 **ROBERT J. TORRES**  
19 **Chief Justice**