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SUPERIOR COURT
OF GUAM



IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

CRIMINAL CASE NO. **CF0096-21**

CPD REPORT NOS. 21-04108/21-04396

vs.

DECISION AND ORDER

RE. DEFENDANT'S MOTION TO
DISQUALIFY A SPECIAL PROSECUTOR

ANTHONY VINCENT IGNACIO
(aka Anthony Vincent Chargualaf
Ignacio; aka Tony; aka Ton),
DOB: 11/02/1984

Defendant.

INTRODUCTION

This matter is before the Honorable Maria T. Cenzone on Defendant Anthony Vincent Ignacio's ("Defendant") Motion to Disqualify a Special Prosecutor (the "Motion"). Representing the Defendant is Attorney Rachel Taimanao-Ayuyu. Representing the People of Guam ("the People") is Special Assistant Attorney General Curtis C. Van de Veld ("Mr. Van de Veld"). Following oral argument and additional supplemental briefing and considerations, the Court took the Motion under advisement pursuant to CR 1.1(g)(4)(B) and CVR 7.1(e)(6)(E) of the LOCAL RULES OF THE SUPERIOR COURT OF GUAM.¹ After having received and reviewed the record on file in this matter and additional information as set forth herein, the Court issues the following Decision and Order **GRANTING** Defendant's Motion.

¹ See Order Re. Under Advisement (Nov. 4, 2025).

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On May 9, 2025, Defendant filed the instant Motion, seeking to disqualify Van de Veld from prosecuting this case on the basis that “there is a strong likelihood that a difference of

³ The trial of Defendant Ignacio has been delayed for several reasons, including that the Defendant's previous attorney requested to withdraw as counsel, with the consent of the defendant, due to some medical ailments at the time of his request in 2023. See, Motion to Withdraw as Counsel (Oct. 4, 2023). Subsequently, the Public Defender Service Corporation was appointed as counsel and granted leave to withdraw due to a conflict of interest under Rule 1.7. Attorney Vincent Leon Guerrero was then appointed to represent Defendant (Order (Jan. 26, 2024)) but later relieved, until Attorney Taimanao-Ayuyu was appointed on February 7, 2024. (Notice of Court Appointed Counsel (Feb. 7, 2024)).

People v. Ignacio, Criminal Case No. CF0096-21
Decision and Order Re. Defendant's Motion Disqualify a Special Prosecutor
Page 2 of 28

1 interests between his role as prosecutor and his role as a criminal defense attorney will eventuate,”
2 citing to and relying upon this Court’s previous decision in *People v. Blas*, *Superior Court of*
3 *Guam Criminal Case No. CF0314-21*. The Defendant reiterated the Court’s holding there that “a
4 conflict of interest cannot be avoided when the same people responsible for employing and
5 designating the special prosecutor are also the ones who have final say in plea agreements
6 involving the special prosecutor’s criminal defense clients.” *Id.* at 3.

8 Defendant further asserts that, just as in *Blas*, Van de Veld’s appearance as a SAAG does
9 not fall within any exception set forth in Rule 1.7(b) of the Guam Rules of Professional Conduct
10 (“GRPC”). *Id.* “Based on the above analysis in determining that a concurrent conflict exists, a
11 lawyer cannot reasonably believe that he can provide competent and diligent representation of his
12 client, the People of Guam, and his private criminal defense client.” *Id.* (Emphasis added).

14 Mr. Van de Veld’s twenty-seven (27) page opposition can be reduced to two simple
15 arguments: (1) Defendant has no standing to raise the disqualification because he has failed to
16 establish vindictive prosecution in this case, as noted in *People v. Tennesen*,⁵ and (2) Defendant’s
17 claim of a conflict of interest fails because Defendant is not a current or former client protected
18 under the GRPC.⁶

20 Additionally, Mr. Van de Veld argues that Rules 1.7, 1.8, and 1.9 of the GRPC *do not*
21 restrict attorneys from a “singular side on any paradigm of legal representation.” *Id.* at 9. Those
22 Rules only address injuries to *existing or former clients* “who may be harmed by an attorney’s
23 representation of an adverse party arising from disclosure of confidences to the Attorney and do
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27 ⁵ Ppl’s. Opp’n at 5 (distinguishing *People v. Tennesen*, 2011 Guam 2 ¶ 14 (vindictive prosecution is a basis of
28 jurisdiction). “A defendant is not entitled to a prosecutor of choice. Defendant Ignacio has failed to show that Special
Assistant Attorney General Van de Veld is being utilized to prosecute for vindictive reasons or to show any injury
which will injure to him within the concepts of ‘standing.’” *Id.* at 8.

⁶ *Id.* at 8, 15-27.

1 not contain language limiting that counsel can only represent a party on a singular side of any
2 form of legal action.” *Id.* at 10. Thus, Van de Veld argues that under the applicable ethics rules,
3 he is not prohibited from serving as a prosecutor even if he has a client in a criminal case.
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5 The Defendant did not submit a Reply to the People’s Opposition; therefore, the Court
6 initially took the matter Under Advisement on June 27, 2025. *See CR 1.1 Form 3* (Jun. 27, 2025).
7 While this matter was under consideration by the Court, however, another trial court issued a
8 Decision and Order in which the court therein granted a defendant’s motion to disqualify and
9 remove Mr. Van de Veld due to provisions in Mr. Van de Veld’s contract with the Office of the
10 Attorney General that were deemed to have resulted in a significant risk of violating the Guam
11 Rules of Professional Conduct. *See, Decision and Order Regarding Def.’s Mot. to Disqualify and*
12 *Remove Special Prosecutor, People of Guam v. Frank Joseph Gumatoatao Reyes, Jr., Superior*
13 *Court of Guam Criminal Case No. CF0723-24-01* (Jun. 23, 2025)(Terlaje, J.)(The court therein
14 finding “whether or not these [financial] incentives actually had an impact, the existence of such
15 incentives creates an appearance of impropriety with the potential to diminish faith in the fairness
16 of the criminal justice system.”).

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19 Because the ruling in the *Reyes* case may impact the instant matter, this Court ordered that
20 Mr. Van de Veld serve a copy of his current contract upon Defendant’s counsel and the parties
21 were ordered to submit a memorandum of law “addressing SAAG Van de Veld’s continued
22 appointment as Special Assistant Attorney General in light of [the *Reyes* decision], specifically
23 on the issue of SAAG Van de Veld’s contract with the OAG.” *Order Re. Def’s Mot. To Disqualify*
24 *A Special Prosecutor* (July 2, 2025). SAAG Van de Veld and Defendant submitted the
25 supplemental briefing on July 3, 2025, and July 16, 2025, respectively. After reviewing the
26 submissions, the Court again took the matter under advisement on August 6, 2025.
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1 **B. New Information Arises in the *Whalen* case.**

2 On October 31, 2025, in an unrelated case, *People v. Brian Andrew Whalen*, Superior
3 Court of Guam Criminal Case No. CF0359-25 (the “*Whalen* case”), the Court heard oral argument
4 from Mr. Van de Veld and Defendant Brian Andrew Whalen’s court-appointed counsel, Mr.
5 Fisher on a similar Motion to Disqualify Mr. Van de Veld from appearing in that case as a special
6 prosecutor. The arguments set forth in the pleadings in the *Whalen* case are similar to the
7 pleadings in this instant matter. However, during oral argument in the *Whalen* case, the Court
8 received additional information that was not contained in the pleadings in this instant matter,
9 specifically, that SAAG Van de Veld “is now serving as chief prosecutor at the Office of the
10 Attorney General,” however, at the time, he indicated that he is still under a contractual
11 agreement, rather than a full-time employee of the OAG. *Motion Hrg. in CF0359-25 on 10/31/25*
12 at 3:19:47 PM to 3:22:43 PM (Oct. 31, 2025). Additionally, Van de Veld’s contract was amended
13 since Judge Terlaje’s ruling in *Reyes* to reflect payment on a flat-rate basis rather than on a per-
14 trial compensation schedule, as was the case in *Reyes*. *Id.* at 3:23:14 PM. Because of the change
15 in Van de Veld’s status to Chief Prosecutor and the further modification of his contract between
16 August 6, 2025, and October 31, 2025, in the interest of justice, the Court takes judicial notice of
17 the representations made during oral arguments in the *Whalen* case and adopts them in the Court’s
18 findings in this matter. *See Order Re. Under Advisement (Nov. 4, 2025)*.
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23 **D. Van de Veld Is Now A Full-Time Employee of the Office of the Attorney General.**

24 While the Court continued to deliberate on the question of disqualification in this
25 particular case and after receipt of the new information in the *Whalen* case, during a recent hearing
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1 before this Court in another unrelated matter,⁷ Van de Veld represented to the Court that he is
2 officially an employee of the Office of the Attorney General, declaring: “I am a direct employee
3 of the Office of the Attorney General at this point in time, since December 31st [2025].”⁸ He further
4 represented that “all my criminal cases are done, with the exception of the one awaiting Change
5 of Plea, but I may be withdrawing from that.”⁹ This Court takes judicial knowledge of Mr. Van
6 de Veld’s appearance in a criminal matter assigned to this Court: *People of Guam v. Lorena*
7 *Uncangco*, Superior Court of Guam Criminal Case No. CF0190-24 (the “Uncangco case”). In
8 the *Uncangco case*, Mr. Van de Veld entered his appearance as retained counsel on May 20, 2024.
9 The Court’s review of the filings shows that a plea agreement has not been filed at the time of the
10 issuance of this Decision and Order, and Jury Selection and Trial is scheduled for April 8, 2026.
11 See CF0190-24, *Amended Criminal Trial Scheduling Order* (Jul. 14, 2025).

12 DISCUSSION

13 **I. Defendant Has Standing to Seek the Disqualification of a Prosecutor with A Conflict** 14 **of Interest Under the Guam Rules of Professional Conduct (“GRCP”).**

15 Ignacio’s original motion to disqualify is grounded on a claim that Van de Veld’s dual role
16 of prosecutor and private defense counsel “poses an actual conflict of interest which requires
17 disqualification when there exists a significant risk that representation of one [client] will
18 materially limit the representation of another client.” *Def’s Mot.* at 2 (citing *People v. Blas*, *Guam*
19 *Super. Ct. Case No. CF0334-23-01, Decision and Order* (Apr.2, 2024)). After reviewing his
20 contract, Defendant argued additionally that Van de Veld’s contract with the OAG, both the
21 original and the revised versions, creates a conflict of interest which violates the GRPC because
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27 ⁷ *People of Guam v. Eugene Tudela Huffman*, Criminal Case No. CF0558-24. See *Hrg. on Mot. to Suppress Evidence*
28 at 9:30:50 AM (Feb. 20, 2026).

⁸ *Id.* at 12:01:43 PM.

⁹ *Id.* at 12:02:00 PM – 12:02:03 PM.

1 his engagement creates not only the appearance of impropriety, but “a realistic possibility of
2 compromised duty.” *Def’s Supp. Brief* at 4-5.

3 In response, the People challenge the Court’s jurisdiction to decide the disqualification
4 motion by arguing that Ignacio does not have standing to disqualify Van de Veld as the Special
5 Prosecutor, or, indeed, the Chief Prosecutor in this case (as Van de Veld is now a full-time
6 employee of the OAG). Van de Veld posits that, as a threshold matter, Ignacio lacks standing to
7 raise the disqualification because he is asserting a conflict that is a third-party right, and not one
8 of his own. *Opp’n* at p. 8 (“Defendant’s claimed conflict is an assertion of third-party rights which
9 the California Supreme Court explained in *People v. Badgett*, [citation omitted], do not provide a
10 basis for jurisdiction.”).

13 On the contrary, the Court finds, as a threshold matter, that the Court has jurisdiction to
14 consider the Defendant’s motion pursuant to its inherent powers to regulate the conduct of
15 attorneys; and, this includes considering whether Van de Veld’s dual concurrent role as prosecutor
16 and defense attorney precludes him from serving as either a contractor or a full-time prosecutor
17 for the OAG under the Guam Rules of Professional Conduct (“GRCP”). *Barrett-Anderson* at ¶
18 17 (considering the question of whether an attorney’s continued representation violates or
19 significantly risks violating the Rules of Professional Conduct is part of the inherent power of the
20 court to regulate the conduct of attorneys). The Court’s role in regulating attorney conduct is not
21 found in statutory provisions, but the Guam Supreme Court has confirmed that “[t]he judiciary’s
22 inherent authority is the ‘source of power to do those things necessary to perform the judicial
23 function[s] for which the legislative branch has not provided...’” *People v. Wai Kam Ho*, 2009
24 Guam 18. In this regard, the Guam Supreme Court has articulated the Court’s inherent powers
25 accordingly:
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1 The doctrine of inherent authority allows for a court to act on a matter for which
2 the legislature has not provided, or not fully provided, since equity will not entertain
3 jurisdiction where a statute provides an adequate remedy at law. *See, e.g., Ortwein*
4 *v. Schwab*, 498 P.2d 757, 762 (Or.1972). The judiciary's inherent authority is the
5 "source of power to do those things necessary to perform the judicial function[s]
6 for which the legislative branch has not provided, and, in rare instances, to act
7 contrary to the dictates of the legislative branch." *State v. Plumb*, 87 P.3d 676, 680
8 (Or.Ct.App.2004) (quoting *Ortwein*, 498 P.2d at 762). The judiciary must be able
9 to "ensure its own survival.... To do so, courts possess inherent power, that is,
10 authority not expressly provided for in the [state] constitution but which is derived
11 from the creation of a separate branch of government and which may be exercised
12 by the branch to protect itself in the execution of its constitutional duties." *In re*
13 *Salary of Juvenile Dir.*, 552 P.2d 163, 171 (Wash.1976). Though the judicial power
14 is accepted and generally held to include more than merely deciding cases, such as
15 incidental powers necessary to the effective performance of that primary function,
16 the doctrine of inherent authority is still viewed as a limited source of power in
17 matters where the legislative branch failed to fully provide. *Plumb*, 87 P.3d at 680.
18 Furthermore, "[s]uch powers are strictly procedural in nature and do not confer any
19 substantive authority nor increase the jurisdiction of the court." *State v. Gilkinson*,
20 790 P.2d 1247, 1249 (Wash.Ct.App.1990) (citing to *Ladenburg v. Campbell*, 784
21 P.2d 1306 (Wash.Ct.App.1990)). Case law supports the understanding that the
22 inherent powers of a court are limited and procedural... .

23 *People of Guam v. Wai Kam Ho*, 2009 Guam 18, ¶¶ 8-9. Thus, the Court has jurisdiction to
24 determine whether Ignacio has a colorable challenge to Van de Veld's employment and status as
25 a prosecutor in this case.

26 **A. Ignacio has constitutional standing to challenge Van de Veld's appointment as**
27 **prosecutor, whether under a contract or as a full-time employee.**

28 "Standing" under Article III of the United States Constitution requires a party to establish
three elements: 1) an injury in fact that is (a) concrete and particularized, and (b) actual or
imminent; 2) a causal connection between the injury and the conduct complained of; and, 3) a
likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*,
504 U.S. 555, 560-61 (1992). Van de Veld recognizes that: "Standing to litigate often turns on
imprecise distinctions and requires difficult line-drawing." *Campbell v. Louisiana*, 523 U.S. 392,
397 (1998).

1 In this case, Van de Veld's undertaking of dual concurrent roles on both sides of the
2 figurative "v" in a criminal case deprives Ignacio of his due process rights to a fair trial under the
3 Fourteenth Amendment of the United States Constitution because such representation: (1) results
4 in an injury in fact that is concrete and particularized and that has occurred or is imminent; (2)
5 there is a causal connection between Van de Veld's dual roles as prosecutor and defense attorney
6 and the violation of Ignacio's Fourteenth Amendment due process rights; and, (3) Ignacio's injury
7 would be redressed by disqualifying Van de Veld.¹⁰
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10 **1. Ignacio's claim of a violation of his due process right to a fair trial is
11 concrete and particularized, and is an actual injury that has occurred.**

12 The Fourteenth Amendment to the United States Constitution provides that no
13 State shall "deprive any person of life, liberty, or property, without due process of law..." and is
14 extended to Guam with the same force and effect as in the United States or in any State of the
15 United States. 48 U.S.C.A. § 1421b(u); U.S. Const. amend. XIV, § 1. At its foundation, the due
16 process right guarantees fairness in any criminal proceeding held against a defendant. "It is
17 axiomatic that one has standing to litigate his or her own due process rights." *Campbell v.*
18 *Louisiana*, 523 U.S. 392, 397-400 (1998). Ignacio's claim that Van de Veld's appearance on
19 behalf of the People violates his due process right to a fair trial, coupled with Van de Veld's
20 pecuniary interest as set forth in his contract (as discussed, *infra*), certainly falls squarely within
21 this injury in fact.
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27 ¹⁰ Van de Veld argues that Defendant lacks standing because Defendant cannot establish that he is subject to vindictive
28 prosecution, as was the case in *Tennesson*. However, Van de Veld misapprehends the Guam Supreme Court's ruling
in both *Tennesson* and *Barrett-Anderson*. The High Court never ruled that vindictive prosecution is the *only* basis for
standing to disqualify a prosecutor. Indeed, *Barrett-Anderson* establishes otherwise and requires that, before
disqualification is granted as a harsh remedy, a party must establish both an appearance of impropriety and a violation
of, or a significant risk of violating, the GRPC.

1 Several trial courts in Guam have addressed the specific question of a special
2 prosecutor's dual roles as prosecutor-for-hire and criminal defense attorney under the Guam Rules
3 of Professional Conduct, with varying outcomes. See, *People v. Blas, supra*, (Cenzon, J.)(granting
4 Defendant's Motion to Disqualify SAAG Joseph McDonald due to conflict of interest); *People*
5 *v. Reyes, supra*, (Terlaje, J.)(granting Motion to Disqualify SAAG Van de Veld due to pecuniary
6 interest); *People v. Camp, Superior Court of Guam Criminal Case No. CF0627-19*, Decision &
7 Order Re. Def's *Ex Parte* Mot. to Disqualify Special Assistant Attorney General (Oct. 15,
8 2024)(Tolentino, J.)(SAAG's dual role as special prosecutor while simultaneously representing
9 criminal defense clients constituted an "incurable conflict of interest under GRPC 1.7.").
10 Compare, *People v. Uncangco, Jr., Superior Court of Guam Criminal Case No. CF0478-24*,
11 Decision & Order Re. Mot. to Disqualify Curtis Van de Veld as Special Assistant Attorney
12 General (Feb. 19, 2026)(Tolentino, J.)(denying motion to disqualify Van de Veld on the basis that
13 Van de Veld is "a full-time employee with the office as an Assistant Attorney General in other
14 matters before this court.");¹¹ *People v. Uncangco, Superior Court of Guam Criminal Case No.*
15 *CF0557-24*, Decision and Order (Feb. 24, 2025)(Perez, J.)(limiting application of conflict-of-
16 interest rules in GRPC to violation of current or prior attorney-client relationship which did not
17 exist between Van de Veld and defendant). As of the date of issuance of the instant Decision, the
18 Guam Supreme Court has not issued any precedent on this issue since *Tennesen* – which has
19 been overruled by *Barrett-Anderson* – in the context of a criminal case.¹² Consequently, the Court
20 turns to the cases in other jurisdictions that address a similar conflict.
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27 ¹¹ Although the Court in *Uncangco, Jr.* ruled "the issue of Attorney Van de Veld's conflict of interest as a Special
28 Assistant Attorney General is rendered moot by his full-time employment with the Office of the Attorney General,"
there was no indication in the Decision and Order that Judge Tolentino was aware that Van de Veld continued to
represent a criminal defendant in an active criminal case before this Court.

¹² *Barrett-Anderson* at ¶19 ("We do not read *Tennesen* as inconsistent with our holding today, as it is a disqualification
case concerning personal conflicts in criminal cases; however, to the extent it is inconsistent, we overrule it.").

1 The Court finds the legal analysis applied by the Court of Appeals of Virginia in
2 *Price v. Commonwealth*, 72 Va. App. 474, 484–86, 849 S.E.2d 140, 145 (2020), helpful in its
3 review of the question in the instant case, although *Price* itself is distinguishable (slightly) on its
4 particular facts, like *Barrett-Anderson* – which is also distinguishable on its facts – the
5 fundamental principles are applicable.
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7 In *Price*, the attorney entered his appearance as a “private prosecutor” in the case
8 against Mary Price, the defendant. However, the attorney was simultaneously representing the
9 victim in Ms. Price’s criminal case in a civil matter against Ms. Price for the same injury. In
10 finding a conflict of interest to exist in that instance, the appellate court applied the following
11 analysis:
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13 It has been said that “[t]he prosecutor has more control over life, liberty, and
14 reputation than any other person in America.” Robert H. Jackson, Att’y Gen. of the
15 U.S., The Federal Prosecutor, Address to the Second Annual Conference of United
16 States Attorneys (Apr. 1, 1940). The prosecutor’s great power carries with it great
17 ethical obligations. *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 803,
18 107 S.Ct. 2124, 2135–36, 95 L.Ed.2d 740 (1987) (recognizing that the prosecutor
19 has a “distinctive role” in the criminal justice system). The prosecutor is “a
20 sovereignty whose obligation to govern impartially is as compelling as its
21 obligation to govern at all; and whose interest, therefore, in a criminal prosecution
22 is not that it shall win a case, but that justice shall be done.” *Id.* (quoting *Berger v.*
23 *United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935)). As a
24 “minister of justice,” *Va. R. of Prof. Conduct* 3.8 cmt. 1, the prosecutor’s “duty is
25 to seek justice, not merely to convict,” *Young*, 481 U.S. at 803, 107 S.Ct. at 2135–
26 36 (quoting Model Code of Prof. Resp. EC 7-13 (Am. Bar Ass’n 1982)).
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28 This role as a minister of justice carries with it high ethical obligations and a duty
of impartiality. A Commonwealth’s attorney has duties to conduct “the impartial
prosecution” of the accused and *to ensure that the accused receives a fair trial.*
Lux v. Commonwealth, 24 Va. App. 561, 568, 484 S.E.2d 145 (1997). The
prosecutor is “obligat[ed] to see that the defendant is accorded procedural justice
and that guilt is decided upon the basis of sufficient evidence.” *Va. R. of Prof.*
Conduct 3.8 cmt. 1. ***The prosecutor is ultimately accountable not to any victim***
but to justice.

In this context, “[a] conflict of interest on the part of the prosecution in itself
constitutes a denial of a defendant’s due process rights under art. I, § 11 of the

1 ***Constitution of Virginia.***” *Cantrell v. Commonwealth*, 229 Va. 387, 394, 329
2 S.E.2d 22 (1985); see *Lux*, 24 Va. App. at 569, 484 S.E.2d 145 (holding that “[t]he
3 due process rights of a criminal defendant under both the Virginia and United States
4 Constitutions are violated when the defendant is prosecuted by a Commonwealth’s
5 attorney who has a conflict of interest relevant to the defendant’s case”). **A trial
6 court may disqualify a Commonwealth’s attorney if it determines that the
7 prosecutor “has an interest pertinent to a defendant’s case that may conflict
8 with the Commonwealth’s attorney’s official duties.”** *Lux*, 24 Va. App. at 568,
9 484 S.E.2d 145.

10 In explaining the concept of the “private prosecutor” in Virginia, the Appellate Court described
11 their role as follows, and this role very closely mimics that of a SAAG appointed by the elected
12 Attorney General of Guam:¹³

13 When privately employed counsel assists the [elected] prosecutor, moreover, he
14 takes on the higher ethical obligations of the prosecutor. *Cantrell v.*
15 *Commonwealth*, 229 Va. [387], 393, 329 S.E.2d 22 [(1985)]. ***Just as the public
16 prosecutor may not entertain divided loyalties between the interests of justice and
17 the interests of a private client, neither may the private prosecutor attempt the
18 same.*** “[T]he private prosecutor is prohibited ... from advocating any cause which
19 would be forbidden to the public prosecutor.” *Id.*; see also *Young*, 481 U.S. at 804,
20 107 S.Ct. at 2136 (“A private attorney appointed to prosecute a criminal contempt
21 therefore certainly should be as disinterested as a public prosecutor who undertakes
22 such a prosecution.”). ***All persons who hold the “distinctive role” given to
23 prosecutors, Young, 481 U.S. at 803, 107 S.Ct. at 2135–36, whether for the
24 duration of one case or for a term of office, must maintain the impartiality
25 befitting the system of justice. In short, if it is forbidden to the public prosecutor,
26 it is forbidden to the private prosecutor.***

27 Thus, when a private attorney steps into the shoes of a public prosecutor, he takes
28 on the ethical obligation to maintain impartiality—an obligation that supersedes
any interest of a private client that might conflict with the impartial administration
of justice. [citations omitted]. ***The private prosecutor, like the public prosecutor,
should be disqualified if he has any “interest pertinent to a defendant’s case that
may conflict with the Commonwealth’s attorney’s official duties.”*** *Lux*, 24 Va.
App. at 568, 484 S.E.2d 145 (emphasis added). ***It constitutes a violation of the
defendant’s due process rights if a private prosecutor participates in the
defendant’s prosecution while maintaining such a conflict of interest.*** *Cantrell*,
229 Va. at 394, 329 S.E.2d 22; *Lux*, 24 Va. App. at 568, 484 S.E.2d 145.¹⁴

¹³ See 5 GCA § 30109.

¹⁴ *Price v. Commonwealth*, 72 Va. App. 474, 486–88, 849 S.E.2d 140, 146–47 (2020).

1 The Appellate Court in *Price* also rejected the Commonwealth’s argument that the
2 private prosecutor should only be disqualified if the criminal prosecution and the civil case arise
3 out of the same underlying occurrence; that is, the cases must arise out of the same facts and
4 involve the same parties. In rejecting this argument, the Appellate Court ruled:

6 [T]he absence of such a[] [“pecuniary or other tangible interest in the outcome of a
7 prosecution”] does not eliminate the greater ethical conflict that arises whenever an
8 attorney attempts to “serve two masters.” *Id.* at 393, 329 S.E.2d 22. ***The private***
9 ***attorney owes his loyalty to the client; the prosecutor owes his loyalty to the***
10 ***impartial administration of justice. Any conflict between these loyalties, direct or***
11 ***implied, violates the defendant's due process rights guaranteed under the United***
12 ***States Constitution and the Constitution of Virginia. This is why a trial court can***
13 ***disqualify a prosecutor if that prosecutor “has an interest pertinent to a***
14 ***defendant's case that may”—not “will”—conflict with the prosecutor's duties.***
15 ***Lux, 24 Va. App. at 568, 484 S.E.2d 145 (emphasis added).***

16 The Commonwealth argues, however, that even if the trial court erred in failing to
17 disqualify Redden, such error was harmless. We disagree. Harmless-error analysis
18 is inappropriate when evaluating the effect of an interested prosecutor in a criminal
19 case, because “such analysis would not be sensitive to the fundamental nature of
20 the error committed.” *Young*, 481 U.S. at 812, 107 S.Ct. at 2140; see *Cantrell*, 229
21 Va. at 394, 329 S.E.2d 22. As opposed to the review of “discrete exercises of
22 judgment by lower courts,” ***the rule governing disqualification of an interested***
23 ***prosecutor “requires no subtle calculations of judgment” by a reviewing court.***
24 ***Young, 481 U.S. at 814, 107 S.Ct. at 2141. Because a prosecutor's many decisions***
25 ***are often not contained in the record, the precise moments of misconduct arising***
26 ***from such a situation cannot be easily identified and evaluated.*** *Id.* at 813, 107
27 S.Ct. at 2140–41. ***Such error has “fundamental and pervasive effects” that infect***
28 ***the entire proceeding with prejudice. Id. at 814, 107 S.Ct. at 2141.***

21 *Price*, 72 Va. App. at 490–91, 849 S.E.2d at 147–48 (emphasis added).

22 Thus, even in circumstances where a prosecutor-for-hire continues to serve
23 another master on the other side of the “v” in an unrelated criminal case, the Appellate Court
24 found no distinction in finding an incurable conflict of interest because of its damage to the
25 public’s perception of a fair and just criminal justice system, declaring:

27 ***A concern for actual prejudice in such circumstances misses the point, for what***
28 ***is at stake is the public perception of the integrity of our criminal justice system.***

1 ***“[J]ustice must satisfy the appearance of justice,” and a prosecutor with***
2 ***conflicting loyalties presents the appearance of precisely the opposite.***¹⁵

3 Applying the *Price* analysis here, the Court finds that Defendant’s injury is a
4 violation of his due process rights to a fair and just trial. Therefore, Defendant Ignacio has
5 articulated an actual and concrete injury that has occurred, satisfying the first prong of standing.
6 *See also, Reyes, supra* (“The Court believes that a perceived violation of due process is an injury
7 in fact in itself, which Defendant argues has already occurred.”).

9 **2. Defendant has established a causal connection between the injury and the**
10 **conduct of which he complains.**

11 The second requisite factor in determining Ignacio’s standing is whether he has
12 established a causal connection between the injury – the violation of his due process rights – and
13 the conduct complained of – Van de Veld’s dual role of prosecutor-for-hire and defense counsel
14 in an unrelated case. As discussed at great length, *supra*, Defendant has established that Van de
15 Veld’s role as a special prosecutor, acting on behalf of the Attorney General of Guam (whether
16 pursuant to a contract or as a designated Deputy Attorney General under 5 GCA § 30106 (“Deputy
17 Attorneys General”)), is the cause of the due process violation. As such, the second prong is
18 satisfied.
19

20 **3. The injury to Defendant will be redressed by a favorable decision on the**
21 **Motion to Disqualify Mr. Van de Veld.**

22 The third prong, whether the injury to Defendant will be redressed by a favorable
23 decision, is satisfied if the Court finds that Van de Veld’s status either as a contractor or a full-
24 time employee violates Defendant’s due process rights under the 14th Amendment.
25

26
27
28 ¹⁵ *Id.* (citing *Young* at 811-12, 107 S.Ct. 1t 2139-40 (alteration in original)(quoting *Offut v. United States*, 348 U.S.
11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954)).

1 Consequently, the Court finds that Defendant Ignacio has standing to challenge Mr. Van
2 de Veld's qualification to serve as the SAAG or Chief Prosecutor assigned to prosecute this case.
3 However, before the Court analyzes whether Attorney Van de Veld should be disqualified as the
4 prosecutor in this case under the Guam Rules of Professional Conduct, the Court considers
5 whether the statute prohibiting employees of the OAG from engaging in any outside employment
6 precludes Van de Veld's current full-time employment in the OAG.
7

8 **II. Van De Veld's Role as Counsel of Record in an Active Criminal Case Which Pre-**
9 **Dates His Employment as a Deputy Attorney General in the Office of the Attorney**
10 **General Precludes His Representation of the People in this Case.**

11 As discussed, above, Van de Veld recently represented to the Court that he is now a full-
12 time employee of the Office of the Attorney General, Department of Law. This is a significant
13 change in circumstance from when he first appeared in this and other cases as a Special Assistant
14 Attorney General, while still maintaining an active criminal (and non-criminal) practice. The
15 Court also takes judicial notice of the fact that Mr. Van de Veld is identified on the FY2026
16 Current Staffing Pattern of the Office of the Attorney General as a Deputy Attorney General in
17 the General Crimes Division as of December 31, 2025.¹⁶ Mr. Van de Veld also admits that he
18 currently represents a defendant in an active criminal case: *People v. Uncangco*, Criminal Case
19 No. CF0190-24. He entered his appearance in the *Uncangco* case on May 20, 2024. *Entry of*
20 *Appearance for Defendant* (May 20, 2024). He remains the attorney-of-record for Ms. Uncangco
21 in CF0190-24.
22
23

24 During several hearings unrelated to the instant matter, Mr. Van de Veld made various
25 inconsistent statements regarding his representation of criminal defendants while also serving as
26
27
28

¹⁶ See Reports and Publications of the Office of the Attorney General of Guam at [guamattorneygeneral.org](https://drive.google.com/file/d/1H7t3-HE0u3cyHDMLArVuWTGcOJbr8ARx/view) at <https://drive.google.com/file/d/1H7t3-HE0u3cyHDMLArVuWTGcOJbr8ARx/view>.

1 a Special Prosecutor for the Office of the Attorney General and prior to his hire as an employee
2 of the Office of the Attorney General. Most recently, as described above, Mr. Van de Veld stated
3 that the *Uncangco* case was only awaiting a plea. However, this Court is assigned to the *Uncangco*
4 case and takes judicial notice that the matter is currently set for trial on April 8, 2026. No plea
5 agreement has been submitted to the Court for consideration. In addition, no application or motion
6 to withdraw as counsel has been lodged with the Court as required under Rule 1.16 of the Guam
7 Rules of Professional Conduct.
8

9
10 Moreover, Mr. Van de Veld cannot represent a client under his Professional Corporation,
11 Van de Veld Law Offices, P.C., and *also* be an employee of the Office of the Attorney General.
12 This is prohibited by 5 GCA § 30113, which bans outside employment by any person employed
13 in the Department of Law:

14 **§ 30113. Outside Employment Regulated.** Neither the Attorney General nor any
15 person employed in the Department of Law shall engage in any outside
16 employment which shall conflict with his duties within the Department of Law.
17 Attorneys employed as classified or unclassified attorneys in the Department of
18 Law, or any attorney employed as classified or unclassified attorneys by any
19 government of Guam agency, department or instrumentality, including
20 semiautonomous or autonomous agencies or branch of the government of Guam
21 shall not engage in the practice of law outside of the Department of Law, or the
22 agency, department, instrumentality or branch of the government of Guam, unless
23 the attorney is exempted from this restriction because the attorney is a member of
24 the U.S. military armed forces or U.S. Coast Guard serving actively, or serving in
25 the reserves, or state or Guam guard; or unless the attorney is exempted from this
26 restriction because the attorney is performing pro bono service, or teaching or
27 training that is approved by the Attorney General or by the head or director of the
28 agency, department, instrumentality or branch of the government of Guam.

29
30 Mr. Van de Veld's on-going employment by Ms. Uncangco as her attorney-of-record in
31 an active criminal matter that is set for trial in April, 2026, pre-dates his employment with the
32 Office of the Attorney General by over a year and a half. Consequently, his pre-existing obligation
33 to Ms. Uncangco and the statutory prohibition against outside employment by any employee of

1 the Department of Law preclude him from representing the People in this case. To reiterate the
2 Appellate Court in *Price*, *supra*: “[J]ustice must satisfy the appearance of justice,” and a
3 *prosecutor with conflicting loyalties presents the appearance of precisely the opposite.*
4

5 Importantly, even if Van de Veld were to apply to withdraw as counsel for his client in
6 *Uncangco*, or resolve the case by Plea Agreement or otherwise, this would not cure the conflict
7 because the simultaneous representation of adverse interests creates an inherent and actual
8 conflict of interest that cannot be cured by the subsequent resolution of one matter. See, *Price*,
9 *infra*, at 489 (a defense counsel owes his client a duty of loyalty and confidentiality and to act
10 with zeal in advocacy, while as a prosecutor, he is expected to rid himself of all partialities and
11 pledge his efforts toward nothing but the independent administration of justice; thus, “the
12 likelihood of conflict between these two duties rises to the level of an overwhelming
13 probability.”). Because the ethical conflict occurred during the simultaneous representation of
14 both the People and a criminal defendant, the resolution of one matter does not change the fact
15 that a violation has occurred.
16
17

18 This statutory prohibition alone disqualifies Mr. Van de Veld from being employed in the
19 Office of the Attorney General while he represents criminal defendants, including, but not limited
20 to *Uncangco*;¹⁷ therefore, he is prohibited from serving as a prosecutor in this instant case.
21 However, because Van de Veld was originally appointed as a Special Assistant Attorney General
22 under a contract of employment that was not full-time employment, if his full-time employment
23
24
25
26

27 ¹⁷ Van de Veld represented to the Court that he also represents criminal defendants in post-adjudicated cases; however,
28 he stated that he has no intention of withdrawing from those cases at present and indicated a plan to seek withdrawal
if and when any violation is filed against the client. Thus, Mr. Van de Veld continues to serve as the attorney-of-record
in criminal matters which are still active.

1 is rendered invalid and, if the Court assumes that the contract survives, the Court proceeds to
2 analyze the disqualification under GRCP Rule 1.7.

3 **III. Guam Law Governing Attorney Disqualification Prohibits Van de Veld's**
4 **Concurrent Representation of the People and Criminal Defendants.**

5 It is undisputed that the current standard for attorney disqualification in Guam, as
6 articulated by the Guam Supreme Court, “is whether an attorney's continued representation of a
7 party or participation in an action violates or significantly risks violating the Guam Rules of
8 Professional Conduct.” *Barrett-Anderson v. Camacho*, 2018 Guam 20, ¶ 20. As this Court has
9 ruled in its prior Decision and Order in *People v. Blas*, *Superior Court of Guam Criminal Case*
10 *No. CF0334-23-01* (Apr. 2, 2024), although *Barrett-Anderson* sets forth the applicable standard
11 to determine whether a conflict exists requiring attorney disqualification, it does not supply the
12 relevant analysis in this particular case because *Barrett-Anderson* did not implicate GRPC Rule
13 1.7, but dealt with a conflict of interest under GRCP Rule 1.9.¹⁸

14
15
16 In this case, the applicable analysis for disqualification invokes the conflict-of-interest
17 rules set forth in GRCP Rule 1.7:

18 **Rule 1.7: Conflict of Interest: Current Clients.**

19
20 (a) Except as provided in paragraph (b), a lawyer shall not represent a client
21 if the representation involves a concurrent conflict of interest. A concurrent
22 conflict of interest exists if:

23 (1) the representation of one client will be directly adverse to another
24 client; or

25 (2) there is a significant risk that the representation of one or more
26 clients will be materially limited by the lawyer's responsibilities to another
27 client, a former client or a third person or by a personal interest of the
28 lawyer.

¹⁸ *Barrett-Anderson*, 2018 Guam 20, ¶ 26 (“Rule[] 1.7 [is] not implicated here.”).

1 (b) Notwithstanding the existence of a concurrent conflict of interest under
2 paragraph (a), a lawyer may represent a client if:

- 3 (1) the lawyer reasonably believes that the lawyer will be able to
4 provide competent and diligent representation to each affected client;
5 (2) the representation is not prohibited by law;
6 (3) the representation does not involve the assertion of a claim by
7 one client against another client represented by the lawyer in the same
8 litigation or other proceeding before a tribunal; and
9 (4) each affected client gives informed consent, confirmed in
10 writing.

11 The question of whether an attorney is disqualified under Rule 1.7 from acting as a
12 prosecutor in a case where the private attorney simultaneously represents defendants in active
13 criminal cases is one of first impression. *Barrett-Anderson* involved the disqualification of the
14 Office of the Attorney General (“OAG”) in a civil matter. *Tenessen* involved the disqualification
15 of the OAG in a criminal case concerning *personal* conflicts of interest involving then-Attorney
16 General Douglas Moylan. *Tenessen*, at ¶ 6, fn. 2. As disclosed previously, the Court is not aware
17 of any subsequent Guam Supreme Court case, and the parties have not identified any Guam
18 appellate cases addressing attorney disqualification under Rule 1.7 under these circumstances.

19 **A. Rule 1.7 requires Defendant to show that Van de Veld’s SAAG appointment**
20 **results in a “significant risk” of violating the Rules of Professional Conduct;**
21 **Defendant has established an “actual conflict”.**

22 *Barrett-Anderson* requires that a Defendant establish more than “an appearance of
23 impropriety” to justify the disqualification of an attorney. However, the Guam Supreme Court
24 did not wholly reject a Court’s consideration of the “appearance of impropriety” in considering
25 attorney disqualification, but merely requires that before finding disqualification is warranted, the
26 appearance of impropriety must be coupled with an additional showing that the attorney’s
27 continued dual representation “violates or significantly risks violating the Guam Rules of
28 Professional Conduct.” *Barrett-Anderson*, at ¶ 17, 20 (quoting *Bergeron v. Mackler*, 623 A.2d
489, 493 (Conn. 1993) (“Although *considering* the appearance of impropriety may be part of the

1 inherent power of the court to regulate the conduct of attorneys, it will not stand alone to
2 disqualify an attorney in the absence of any indication that the attorney's representation risks
3 violating the Rules of Professional Conduct.”)).

4
5 Moreover, in determining whether “there is a significant risk that the representation of one
6 or more clients will be materially limited by the lawyer's responsibilities to another client, a
7 former client or a third person or by a personal interest of the lawyer” under Rule 1.7, the
8 “significant risk” does not allow for disqualification for a potential conflict, but for “inevitable
9 and material conflicts.” *Id.* In considering the appropriate formula, the Court considers the
10 analysis by the Iowa Supreme Court in *Bottoms*, which reasoning was adopted by the Guam
11 Supreme Court in *Barrett-Anderson*.

12
13 Although *Bottoms*, like *Barrett-Anderson*, does not involve a criminal proceeding, the
14 principles are articulated clearly therein, and Iowa Rule of Professional Conduct 32:1.7 mirrors
15 Guam's Rule 1.7 in all applicable respects.¹⁹ Consequently, the Court finds its analysis in
16 determining whether there exists a disqualifying conflict both persuasive and appropriate. The
17 Iowa Supreme Court reasoned as follows:
18

19
20
21 ¹⁹ Iowa R. of Prof'l Conduct 32:1.7 mirrors Rule 1.7 of the Guam Rules of Professional Responsibility in all relevant
aspects, and provides:

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

- 23 (1) the representation of one client will be directly adverse to another client; or
24 (2) 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.

25 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a
client if:

- 26 (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent
representation to each affected client;
27 (2) the representation is not prohibited by law;
28 (3) the representation does not involve the assertion of a claim by one client against another client
represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

(c) In no event shall a lawyer represent both parties in dissolution of marriage proceedings.

1 The question to be answered under rule 32:1.7(a)(2) is whether there is "a significant
2 risk" that counsel's representation of one client "will be materially limited by [his
3 or her] responsibilities to another client." See *id.* r. 32:1.7(a)(2). Although related
4 to the old "appearance of impropriety" test, the modern approach focuses on the
5 degree of risk that a lawyer will be unable to fulfill his or her duties to both clients.
6 See generally 1 *The Law of Lawyering* § 10.4, at § 10-12 to 10-13 (noting the old
7 standard was "too vague and subjective" and was dropped from the ABA Model
8 Rules of Professional Conduct).

9 A comment to rule 32:1.7 sheds light on when a conflict of interest will materially
10 limit an attorney in the performance of the attorney's responsibilities:

11 [A] conflict of interest exists if there is a significant risk that a lawyer's ability to
12 consider, recommend, or cony out an appropriate course of action for the client will
13 be materially limited as a result of the lawyer's other responsibilities.... The mere
14 possibility of subsequent harm does not itself require disclosure and consent. *The*
15 *critical questions are the likelihood that a difference in interests will eventuate*
16 *and, if it does, whether it will materially interfere with the lawyer's independent*
17 *professional judgment in considering alternatives or foreclose courses of action*
18 *that reasonably should be pursued on behalf of the client.*

19 *Bottoms* at 416 (quoting Iowa R. of Prof'l Conduct 32:1.7 cmt. [8]) (emphasis added).

20 In *Barrett-Anderson*, the Guam Supreme Court noted *Bottoms* as finding that the "concept
21 of a potential conflict of interest is foreign to the new ethical rule." The entire portion of the Iowa's
22 court's discussion about potential conflict is important to consider, so it is replicated here:

23 In considering this ruling [of the district court that "there is a significant potential
24 for divergence of" the interests of the attorney's clients], we first note that the
25 concept of a potential conflict of interest is foreign to the new ethical rule. That is
26 because rule 32:1.7(a)(2) states that *a conflict of interest "exists if there is a*
27 *significant risk that the representation of one or more clients will be materially*
28 *limited by the lawyer's responsibilities to another client."* Iowa R. of Prof'l
Conduct 32:1.7(a)(2) (emphasis added). In other words, if there is a significant risk
that representation of one client will materially limit the representation of another
client, *a conflict of interest actually exists; it is not merely potential.* See 1 *The Law*
of Lawyering § 10.4, at 10-13. Thus, only an actual conflict of interest, as defined
in rule 32:1.7(a), will justify disqualification.

29 *Bottoms* at 411. The Court interprets this finding in *Bottoms* as standing for the proposition that
the existence of a significant risk that the representation of one client will materially limit the

1 representation of another client is *in and of itself* an actual – not potential – conflict of interest
2 which requires disqualification.

3
4 The several cases cited by the Court herein support a finding that an attorney who serves
5 a dual role of prosecutor in one case and defense counsel in another creates an actual conflict of
6 interest which “will materially interfere with the lawyer's independent professional judgment in
7 considering alternatives or foreclose courses of action that reasonably should be pursued on behalf
8 of the client” – whether the client is the People or the criminal defendant. *See, Bottoms* at 411.
9 This precept is true, even if the matters are unrelated.

10
11 The Washington Supreme Court is in accord: a special prosecutor cannot also serve a dual
12 role as a defense attorney, even in unrelated matters. In *State v. Tracer*, 173 Wash. 2d 708, 718–
13 20, 272 P.3d 199, 204 ¶¶ 23-26 (2012)(en banc), under the relevant procedure, a trial court
14 appointed a local defense attorney, who happened to be in court that day on an unrelated matter,
15 as temporary special deputy prosecuting attorney to prosecute the case against Tracer. On appeal,
16 the Supreme Court found that the attorney was not qualified to serve as temporary special deputy
17 prosecuting attorney because he was a defense attorney in unrelated matters. The Court reasoned
18 as follows:
19

20 As noted above, RCW 36.27.030 authorizes a court or judge to “appoint some
21 *qualified* person” to discharge the duties of a prosecuting attorney. (Emphasis
22 added.) While the statute does not define “qualified,” it seems beyond dispute that
23 a qualified attorney must not be ethically prohibited by the Rules of Professional
24 Conduct (RPC) from discharging the prosecuting attorney's duties. Instead, a
25 special deputy prosecuting attorney must be able to protect the public interest by
26 fairly performing the functions of the office without a conflict of interest.

27 A concurrent conflict exists if “the representation of one client will be directly
28 adverse to another client.” RPC 1.7(a)(1). As the RPC committee's comment to this
rule explains, “absent consent, **a lawyer may not act as an advocate in one matter
against a person the lawyer represents in some other matter, even when the
matters are wholly unrelated.**” *Id.* cmt. 6 (emphasis added). The RPCs prohibit a

1 lawyer from representing a client if a concurrent conflict of interest exists unless a
2 strict exception is met that requires both clients' informed, written consent.

3 Division One of the Court of Appeals has recognized that a conflict of interest exists
4 when an attorney represents a criminal defendant in superior court and
5 simultaneously acts as a prosecuting attorney in the same county. *State v.*
6 *Tjeerdsma*, 104 Wash.App. 878, 884–85, 17 P.3d 678 (2001) (conflict of interest
7 was created when attorney representing a criminal defendant in Skagit County
8 Superior Court was appointed as a special deputy prosecuting attorney for the
9 Skagit County Prosecuting Attorney's Office in an unrelated case). In an advisory
10 ethics opinion, the RPC committee opined that ***a concurrent conflict of interest***
11 ***arises when an attorney serves as a misdemeanor defense attorney in municipal***
court and also intermittently acts as a prosecuting attorney pro tempore for the
city. Wash. State Bar Ass'n Advisory Op. 1766 (1997), available at
<http://mcle.mywsba.org/IO/>.⁸ ***The RPC committee found this to be true even***
though the attorney's representation of the defendants and the city related to
different matters. Id.

12 ***The rationale for this rule lies in the appearance of impropriety created by vesting***
13 ***the “inherently antagonistic and irreconcilable” roles of the prosecution and the***
14 ***defense in one attorney.*** *Howerton v. State*, 1982 OK CR 12, 640 P.2d 566, 567.
15 In holding that a part-time district attorney may not represent a criminal defendant
16 anywhere in the state of Oklahoma, the Court of Criminal Appeals of Oklahoma
17 reasoned that although it was difficult or impossible to determine whether the
18 representation was actually affected, ***“[t]he public has a right to absolute***
confidence in the integrity and impartiality of the administration of justice. The
conflicts presented in this case, at the very minimum, give the proceeding an
appearance of being unjust and prejudicial.” [citation omitted].

19 See also, *State v. Brown*, 853 P.2d 851, 856–59 (Utah 1992)(Dual representation erodes public
20 confidence in the criminal justice system. “To ensure faith in the impartiality and integrity of the
21 justice system, the appearance of fairness and impartiality in the adjudication process must be
22 diligently maintained.”).

23 Van de Veld has served as a SAAG in several unrelated cases in different courts while
24 remaining the attorney of record for defendants in post-adjudicated matters, and for a defendant
25 in an active pretrial criminal case before this Court in the *Uncangco* case for nearly two years,
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27
28

1 since May 20, 2024.²⁰ The *Uncangco* case is scheduled for trial on April 8, 2026, with a pre-trial
2 conference scheduled on March 31, 2026. See *CF0190-24, Amended Criminal Trial Scheduling*
3 *Order* (Jul. 14, 2025). Regarding his post-adjudication cases, Van de Veld informed the Court
4 that because he does not assume that his clients would violate the terms of their plea agreements,
5 he would not proactively request to be relieved as counsel for those defendants. See, *Whalen case,*
6 *Min. Entry*, 3:30:55 PM to 3:31:33 PM (Oct. 31, 2025). However, if a violation were lodged
7 against a client on probation, Mr. Van de Veld indicated that he would request to be relieved as
8 counsel as a matter of “preference” to reduce his workload and eventually “retire from the practice
9 of law.” *Id.* at 3:31:34 PM to 3:32:08 PM.

12 As discussed in *Price*, it matters not whether Mr. Van de Veld has a “pecuniary or other
13 tangible interest in the outcome of a prosecution,” but a greater ethical conflict arises “whenever
14 an attorney attempts to “serve two masters”: **“The private attorney owes his loyalty to the**
15 **client; the prosecutor owes his loyalty to the impartial administration of justice. Any conflict**
16 **between these loyalties, direct or implied, violates the defendant’s due process rights**
17 **guaranteed under the United States Constitution”** *Price* at 393, 329 S.E.2d 22. Mr. Van
18 de Veld’s concurrent representation of criminal defendants while simultaneously prosecuting
19 individuals charged with a crime results in an actual conflict because “the representation of one
20 or more clients will be materially limited by [his] responsibilities to another client,” as proscribed
21 by Rule 1.7.

24 The Court now considers whether Van de Veld’s dual roles may be permitted pursuant to
25 any exception contained in GRPC Rule 1.7(b).

28 ²⁰ The Court takes judicial notice of CF0190-24 and its filings for the purposes of this Court’s consideration and discussion.

1 **B. Van de Veld's conflicting dual roles as prosecutor and defense counsel is not**
2 **exempted by Rule 1.7(b).**

3 Rule 1.7(b) provides as follows:

4 Notwithstanding the existence of a concurrent conflict of interest under paragraph
5 (a), a lawyer may represent a client if:

6 (1) *the lawyer reasonably believes that the lawyer will be able to provide*
7 *competent and diligent representation to each affected client;*

8 (2) *the representation is not prohibited by law;*

9 (3) the representation does not involve the assertion of a claim by one client
10 against another client represented by the lawyer in the same litigation or other
11 proceeding before a tribunal; *and*

12 (4) *each affected client gives informed consent, confirmed in writing.*

13 GRPC 1.7(b)(1)-(4) (emphasis added).

14 Under 1.7(b)(1), Mr. Van de Veld must “reasonably” believe that they will be able to
15 provide competent and diligent representation to each affected client on either side of the “v” in
16 a criminal case. GRPC 1.7(b)(1). Despite his representations that he can do so, the Court finds
17 such belief to be unreasonable under the circumstances. As the court stated in *Price*:

18 *Because a prosecutor's many decisions are often not contained in the record, the*
19 *precise moments of misconduct arising from such a situation [where the*
20 *prosecutor serves as defense counsel] cannot be easily identified and evaluated.*
21 *[citation omitted]. Such error has “fundamental and pervasive effects” that infect*
22 *the entire proceeding with prejudice.*

23 *Price*, 72 Va. App. at 490–91, 849 S.E.2d at 147–48 (emphasis added).

24 Additionally, Mr. Van de Veld's full-time employment while he continues to represent
25 criminal clients both in active litigation and post-adjudication is prohibited by law, under 5 GCA
26 § 30113. Finally, Mr. Van de Veld has not proffered any evidence that any of his criminal defense
27 clients have given informed consent in writing, although he has had ample opportunity to do so.

28 As such, Mr. Van de Veld's dual roles as prosecutor (whether by contract or as a full-time
employee) and defense counsel create an incurable conflict of interest precluding him from
serving as a prosecutor in this case.

1 **IV. Right to Counsel under the Sixth Amendment Does Not Extend to Prosecution's**
2 **Selection of Prosecutor Who Serves Dual Role as Defense Counsel.**

3 Although the Court's ruling that Mr. Van de Veld's concurrent representation of his
4 defense clients precludes him from serving as the prosecutor in this case, the Court finds that it is
5 important to address Mr. Van de Veld's claim that the disqualification violates the People's right
6 to counsel of its own choosing. *People's Opp. at pp. 9-14*. However, none of the cases he cites
7 support the proposition that the right extends to the prosecution where there is an incurable
8 conflict of interest attributable to the prosecutor's simultaneous representation of criminal
9 defendants. The cases he cites, in addition to being inapplicable in this instance, also recognize
10 that, "The right of a party to choose his or her own attorney is important, but it must be balanced
11 against the need to maintain the highest ethical standards that will preserve the public's trust in
12 the bar and in the integrity of the court system." *People's Opp. at p. 10* (citing to *Deere & Co.*
13 *and John Deere Shared Services, Inc. v. Kinze Manufg., Inc. and AG Leader Technology, Inc.*,
14 *S.D. Iowa, Censual Division, Case No. 4:20-cv-00389-RGE-SHL (10/01/2021)*(quoting *NuStar*
15 *Farms, LLC v. Zyistra*, 880 N.W.2d 478, 482 (Iowa 2016)).

16
17
18
19 Courts have applied this balancing test to disqualify a defendant's choice of counsel,
20 notwithstanding his 6th Amendment right to counsel of his own choice, when the defendant's
21 attorney also served as a prosecutor for the county. In *State v. White*, 114 S.W3d 469 (Tenn.
22 2003), the People sought the disqualification of Defendant's attorney because counsel also served
23 as an assistant district attorney for the same county. In affirming the disqualification, the
24 Tennessee Supreme Court held that the State met its burden of proof in showing that Defendant's
25 attorney's dual roles as assistant district attorney and criminal defense lawyer in the same county
26 "created an actual conflict of interest that the State could not be forced to waive," and, further,
27
28

1 "that this conflict of interest *superseded the appellant's right to the counsel of his choosing.*" *Id.*
2 at p. 479 (emphasis added).

3 In so ruling, the Tennessee court reasoned:

4
5 These ethical duties and principles demonstrate that the Court of Criminal Appeals
6 properly concluded that *McDaniel's dual roles as assistant district attorney*
7 *general and defense counsel in the same county were inherently antagonistic and*
8 *thus, created an actual conflict of interest.* The ethical obligations of these dual
9 roles required McDaniel to represent the interests of two adverse parties
10 simultaneously and forced him to attempt to reconcile his duty to vigorously
11 prosecute criminal offenses on behalf of the State with his duty to zealously defend
12 the criminal defendant. In his capacity as an assistant district attorney, for example,
13 his ethical duties required him to advocate for the public and to seek justice. In his
14 capacity as defense counsel, however, his ethical duties required him to be a zealous
15 advocate of White and an adversary to his fellow assistant district attorneys in
16 Shelby County. As the Board of Professional Responsibility has correctly observed,
17 such a conflict would prove detrimental to the lawyer's representation:

18
19 Prosecutors have taken an oath of office to uphold and apply state law in
20 prosecutions and assist ... law enforcement officers in prosecuting alleged
21 crime. Zealous representation of criminal defendants very often will require
22 ... vigorous cross-examination of the testimony of such law enforcement
23 personnel, and in many instances will require challenging the very laws the
24 prosecutor is charged to enforce. Even if cross-examination of such
25 personnel would not involve the disclosure of confidences and secrets of the
26 state or municipality, the desire to maintain a harmonious working
27 relationship with these law enforcement officers could adversely affect the
28 inquiring attorney's zeal in conducting such cross-examination.

29 Formal Ethics Opinion 2002-F-146. The Disciplinary Rules preventing conflicts
30 of interests were specifically designed to free the lawyer's judgment from such
31 "compromising interests and loyalties." Tenn. R. Sup.Ct. 8, EC 5-1; see also
32 *Blackwood*, 46 S.W.3d at 187; *Culbreath*, 30 S.W.3d at 312-13.²¹

33 Consequently, the People have not articulated any support for the proposition that, under
34 these circumstances, it has the right to counsel of its own choosing in light of the conflict of
35 interest.

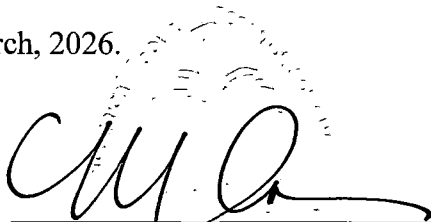
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38 ²¹ *Id.* (emphasis added).

1 **CONCLUSION**

2 The Court finds that Mr. Van de Veld cannot be both prosecutor and defense counsel
3 under the circumstances because his dual representation, even in unrelated cases, results in an
4 incurable conflict of interest under Rule 1.7(a) of the GRPC. Moreover, the dual roles do not
5 conform to any exceptions to the conflict under Rule 1.7(b) because: (1) his belief that he can
6 provide competent and diligent representation to both the People and his defense clients is
7 unreasonable under the highly adversarial circumstances; (2) his full-time employment with the
8 OAG is barred by 5 GCA § 30113, and (3) Mr. Van de Veld has not produced any written
9 informed consent to the conflict from any of his criminal defense clients.
10

11 For the reasons set forth herein, the Court hereby **GRANTS** the Defendant's Motion to
12 Disqualify a Special Prosecutor. The Court shall issue, under separate cover, an Amended
13 Criminal Trial Scheduling Order.
14

15 **SO ORDERED** this 12th day of March, 2026.
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18 **HONORABLE MARIA T. CENZON**
19 Judge, Superior Court of Guam
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24

25 **SERVICE VIA EMAIL**
26 I acknowledge that an electronic
copy of the original was e-mailed to:

27 **OAG &**
R. Taimahao-Ayuyu
28 Date: 3/12/26 Time: 4:56
Reinita M. Lindlau
Deputy Clerk, Superior Court of Guam