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2008 MAY 14 11:15

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

ATTORNEY GENERAL OF GUAM,
Plaintiff-Appellant,

v.

**VERNON PEREZ, in his official capacity as a Certifying Officer of the
GUAM CIVIL SERVICE COMMISSION and ROBERT H. KONO,**
Defendants-Appellees.

Supreme Court Case No.: CVA07-017
Superior Court Case No.: CV0177-06

OPINION

Cite as: 2008 Guam 16

Appeal from the Superior Court of Guam
Argued and submitted on May 14, 2008
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] This appeal arises out of a complaint brought by Plaintiff-Appellant Attorney General of Guam against Vernon Perez, in his official capacity as certifying officer for the Civil Service Commission (“CSC”), and Robert H. Kono, personally. The complaint challenged the authority by which the position of Administrative Counsel for the CSC was given classified status. The complaint also sought to have Kono repay the Government of Guam the salary and benefits paid to him since his employment as Administrative Counsel. Furthermore, Appellant sought to enjoin Perez from certifying any further payments of salary and benefits to Kono. Perez moved for summary judgment, which Kono later joined. The Attorney General also moved for partial summary judgment. The lower court granted Perez and Kono’s Motion for Summary Judgment, which the Attorney General now appeals. For the reasons stated herein, we AFFIRM the Judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On September 9, 1982, the Board members (“Board”) of the CSC determined that five new merit positions “specifically for the classification of [CSC] technical/professional positions” were justified, including the position of Administrative Counsel. Appellant’s Excerpts of Record (“ER”) at 14 (Mem., Sept. 9, 1982). The justification for these positions was that the CSC staff was “engaged in providing technical review of requests submitted by the personnel agencies and the Governor for the Board’s adjudication” and “provides recommendations/solutions to personnel management problems . . .” *Id.* The memorandum from Ronald Aguon (“1982 Memorandum”), then the acting CSC Executive Director, to Governor Paul M. Calvo cites

specifically to § 4107 of the Guam Government Code, and requests that Governor Calvo approve the creation of these five new classified positions pursuant to this authority. *Id.* at 15. This section of the Government Code, which was codified as 4 GCA § 6303,¹ gives the Governor the authority to create new positions “when necessary for the efficient performance of the duties and functions of the government.” 4 GCA § 6303 (2005). Governor Calvo signed this memorandum on September 24, 1982, below the word “concurred.” ER at 15 (1982 Mem.).

[3] According to its position description, the Administrative Counsel advises the CSC Board on administrative and legal matters. The Administrative Counsel serves as legal counsel, supervises the legal office, and handles all administrative legal matters for the CSC, as well as other related duties.

[4] Effective December 28, 1982, Aguon became the first person to fill the newly-created position of Administrative Counsel, becoming a permanent classified employee after his six-month probationary period expired. Aguon remained in this position as a classified employee until his retirement approximately sixteen years later. Jerry Hogan was then hired as Administrative Counsel, first on a temporary basis and then as permanent Administrative Counsel. In Hogan’s Notification of Personnel Action, he was denominated an “unclassified” appointment. Thereafter, Hogan presented, and the Board adopted, Resolution No. 99-005, finding that it is impracticable for the position of Administrative Counsel to be classified. The resolution cited the following as reasons for this determination: (1) it would be impracticable for the Administrative Counsel to appeal to the very commission that took adverse action against him or her, and (2) the Administrative Counsel must carry out the directions of the commission

¹ Title 4 GCA § 6303 was amended by Public Law 28-112:7 (April 14, 2006). Any reference in this Opinion to this section refers to the 2005 version applicable at the time relevant to the underlying litigation.

and thus, must serve at the Board's pleasure. ER at 50-51 (CSC Resolution No. 99-005, Mar. 2, 1999).

[5] After about four years on the job, Hogan resigned as Administrative Counsel. In the meantime, Guam Public Law 26-121 went into effect, amending 4 GCA § 4403(h) to indicate that the jurisdiction of the Civil Service Commission shall not extend to persons in unclassified positions nor shall its jurisdiction extend to the determination of whether it is practicable to place a person in the classified service. Guam Pub. L. 26-121 (Aug. 15, 2002). On November 3, 2002, Luis Baza, then the Executive Director of the CSC, presented Resolution No. 2003-002, which the Board adopted. This resolution repealed Resolution No. 99-005, pointing out that the authority cited in the prior resolution (4 GCA § 6303) was not applicable to the position of Administrative Counsel as that position was already created prior to the adoption of Resolution No. 99-005, and thus was not a *new* position contemplated by 4 GCA § 6303. Resolution No. 2003-002 placed the position of Administrative Counsel back into the classified service.²

[6] Kono, by lateral transfer, moved from his classified position with the Department of Law, where he served for eighteen years, into the position of CSC Administrative Counsel, receiving the same salary with the CSC as he did with the Department of Law.

[7] On February 17, 2006, the Attorney General filed the underlying complaint, alleging that when the CSC placed the position of Administrative Counsel in the classified service it exceeded its authority. The Attorney General brought the action as a claim in part under 5 GCA § 7103 (Enforcement of Proper Government Spending Act). The Attorney General, citing to the wording of section 4107 of the Government Code (codified as 4 GCA § 6303), claims that the

² Kono contends that neither of these resolutions had any effect on whether the Administrative Counsel position was in the classified service, as protections of the merit system cannot be taken away in such a fashion in the first place. Kono asserts that the position has been continuously classified from the time of its creation in 1982. Appellee Kono's Br. at 10-13. This court, however, declines to reach this issue. See *infra*.

1982 Memorandum purporting to create the five new positions, one of which was the position of Administrative Counsel, was ineffective because it was not addressed to the CSC from the Governor, but rather vice versa, and further, that the Governor's signature concurring in the CSC recommendations was similarly of no effect. Moreover, the complaint alleges that the CSC's Resolution No. 2003-002 was adopted illegally or without authority, in light of Resolution No. 99-005 and Public Law 26-121. The complaint sought to have Kono repay the Government of Guam the salary and benefits he received since his employment as Administrative Counsel, and sought to have Perez enjoined from certifying any further payments to Kono.³ Perez and Kono answered the complaint, denying the allegations and claiming that the complaint is barred by the doctrines of estoppel and laches.

[8] Perez filed a motion for summary judgment, which Kono joined. The Attorney General moved for partial summary judgment. The lower court granted Perez and Kono's motion for summary judgment, and final judgment was entered against the Attorney General. The Attorney General now appeals.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 USC § 1424-1(a)(2) (Westlaw through Pub. L. No. 110-120 (2007)); 7 GCA §§ 3107(b) and 3108(a) (2005).

III. STANDARD OF REVIEW

[10] The trial court's grant of a motion for summary judgment is reviewed *de novo*. *Wasson v. Berg*, 2007 Guam 16 ¶ 9.

³ Although the Attorney General argued in its briefs the argument that Kono should repay all salary and benefits received during his term as Administrative Counsel, the Attorney General abandoned this request at oral argument, conceding that Kono is entitled to *quantum meruit*. See Digital Recording at 11:07-11:09 (Oral Argument, May 14, 2008). See generally *Tanaguchi-Ruth + Assoc. v. MDI Guam Corp.*, 2005 Guam 7.

[11] An agency's interpretation of a statute is reviewed *de novo*. *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10.

IV. DISCUSSION

A. Summary Judgment

[12] "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Hemlani v. Flaherty*, 2003 Guam 17 ¶ 7 (quoting Guam R. Civ. P. 56(c)). Any doubts should be resolved in favor of the non-moving party, and the movant's evidence must be considered in the light most favorable to the non-moving party. *See, Iizuka Corp. v. Kawasho Int'l*, 1997 Guam 10 ¶ 21.

[13] As the movants for summary judgment, Perez and Kono were initially required to present evidence clearly establishing that there was no material factual dispute and they were entitled to judgment as a matter of law. As the defendants, Perez and Kono do not bear the burden of persuasion at trial. Thus, as the moving parties, they may discharge their burden simply by showing the non-existence of an essential element of the non-moving party's case. *See Kim v. Hong*, 1997 Guam 11 ¶ 6. In this case, the non-moving party – the plaintiff (Attorney General) – bears the burden of persuasion at trial, and must come forward with sufficient evidence that there is a genuine issue of fact that remains in dispute, and not simply rely on the allegations in the pleadings. *See Kim*, 1997 Guam 11 ¶ 7; *Leer v. Murphy*, 844 F.2d 628, 631 (9th Cir. 1988); 10A C. Wright, A. Miller, & M. Kane, Civil § 2739. If the non-moving party fails in this regard, then summary judgment should be granted for the defendants. *Kim*, 1997 Guam 11 ¶ 8; *Boulware v.*

Parker, 457 F.2d 450, 452 (3rd Cir. 1972); *Dyer v. MacDougall*, 201 F.2d 265, 268 (2nd Cir. 1952).

[14] In this case, the parties do not dispute the series of events that led to the Attorney General's complaint. However, they disagree as to the ultimate legal question of whether or not the position of Administrative Counsel was lawfully created as a classified position and whether it was properly in the classified service at the time Kono assumed the position. As the movants, Perez and Kono met their initial burden of showing that there are no material facts in dispute and that they are entitled to judgment as a matter of law. To this end, they presented documents and declarations tending to show that the position is properly classified and that there is an absence of evidence in the Attorney General's case – namely, that the position was improperly given classified status without authority.⁴ The Attorney General contends in its briefs, as it did below, that the position of CSC Administrative Counsel is really the same as the unclassified legal counsel position authorized by 4 GCA § 4405(b), and also that Governor Calvo acted without authority when he purportedly created the classified position of Administrative Counsel for the CSC. As stated previously, the parties agree about what memorandum and resolutions were executed on different dates and by whom, as well as who occupied the position of Administrative Counsel at the various times between 1982 and the present. This court now turns to the

⁴ The lower court premised its Decision and Order largely on the failure of the Attorney General to present any facts tending to show that the legislature complied with the requirements set forth in *Haeuser v. Dep't of Law*, 97 F.3d 1152 (9th Cir. 1996), which the lower court deemed an essential element of the Attorney General's case. *Haeuser* discusses the Guam Legislature's mandate to make appointments in accordance with the merit system as far as practicable. 97 F.3d 1152, 1156 (9th Cir. 1996). In Guam, government employees are generally divided into classified and unclassified service. 4 GCA § 4102 (2005). The practical difference between the two classes of employees is that classified employees have the protections of the merit system and unclassified employees do not. *See, e.g.*, 4 GCA § 4106 (2005); *see also Haeuser*, 97 F.3d at 1155. However, for the reasons discussed *infra*, this court does not reach the issue of the legislature's compliance with *Haeuser*, and affirms the lower court's decision based on the Attorney General's failure to produce any rebuttal evidence that the 1982 Memorandum did not validly create the classified position of Administrative Counsel separate and distinct from the unclassified position of legal counsel, as well as on this court's finding, based on a *de novo* review, that there was valid statutory authority for the creation of this position.

argument of whether (1) the two positions are really the same position, (2) there was valid authority for Governor Calvo to create this position, and (3) the manner in which the position was purportedly created was sufficient to satisfy the statute.

1. The Administrative Counsel and the Legal Counsel positions are distinct.

[15] The Attorney General argued that the Administrative Counsel is the same as the legal counsel position specifically referenced in 4 GCA § 4405(b), which states that the CSC shall employ its own legal counsel to serve at the pleasure of the CSC. The language “serve at the pleasure” relates to 4 GCA § 4102, which makes *unclassified* “all . . . employment made, by law, to be at the pleasure of any board, commission or officer.” 4 GCA § 4102(a)(10) (2005).⁵ The Attorney General presented no evidence or specific facts at the summary judgment stage tending to show that these positions are not distinct, and the Attorney General essentially abandoned this contention during oral argument before this court. *See, e.g.*, Digital Recording at 10:07-10:12 (Oral Argument, May 14, 2008). However, because this court’s review is *de novo*, we nonetheless examine this premise.

[16] Perez and Kono contend that the position of Administrative Counsel is a staff position with dual administrative and legal functions, and is not the “legal counsel” referred to in 4 GCA § 4405(b). They posit that the Administrative Counsel position was validly created by Governor Calvo through what became 4 GCA § 6303 (discussed *infra*), and that the authority of the CSC

⁵ The Attorney General argued below and before this court that the position of Administrative Counsel cannot be classified because the nature of the relationship between the Administrative Counsel and the CSC suggests an attorney-client relationship thus implicating the client discharge rule. The Attorney General asserts that the client discharge rule is incorporated into Rule 1.16 of the Guam Rules of Professional Conduct (Declining or Terminating Representation), which states in relevant part that a lawyer shall not represent a client if the lawyer is discharged. The Attorney General argues that CSC’s Administrative Counsel is different from other government attorneys in that this counsel forms an attorney-client relationship with the CSC, and thus the CSC should be free to discharge its counsel at will in conformance with the client discharge rule. However, this argument was raised in the context of the *Haeuser* discussion and, because we decline to reach the *Haeuser* issue, we will not address the nature of the relationship or whether this relationship implicates the client discharge rule. *See* n.4

to employ an individual in this position comes not from the 4 GCA § 4405(b) language pertaining to legal counsel, but from the language in that same section stating that the CSC may employ its own staff. Thus, they argue, the Administrative Counsel is a staff position distinct from the legal counsel position. To this effect, Perez and Kono referenced the job description of this position, which defines its duties as administrative and legal.

[17] Courts reviewing an agency's construction of a statute must reject those constructions that are contrary to clear legislative intent. *See Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10. However, reviewing courts may defer to the agency's interpretation if the statute is silent or ambiguous on a particular point. *Id.* In this case, 4 GCA § 4405(b) does not specifically address the position of Administrative Counsel. The legislative intent behind this statute is to allow the CSC to appoint and maintain a staff. In this respect, to construe the Administrative Counsel as a staff position created by 4 GCA § 6303—and thus coming within the § 4405(b) language “may employ its own staff”—would not seem contrary to this intent. Moreover, nothing else in the law expressly prohibits the creation of a separate Administrative Counsel position distinct from the legal counsel position specifically provided for by statute.

[18] Further evidence submitted by Perez and Kono in support of this contention include the 1982 Memorandum wherein Governor Calvo approved the creation of the new CSC staff position of Administrative Counsel, as well as declarations and personnel actions indicating that this position was recognized as classified from 1982 to the present (with a short exception during Hogan's term). In addition, Perez and Kono presented evidence showing that Kono was properly hired as Administrative Counsel as a lateral transfer from the Department of Law, and that this position had been repeatedly funded by law out of the CSC's personnel budget as a classified position. *See* Appellee Kono's Excerpts of Record (“Kono's SER”) at 22-24 (Decl. of Luis Baza,

May 5, 2006);⁶ *see also id.* at 19-21 (Second Decl. of Juan Calvo, May 14, 2006).⁷

[19] The Attorney General submitted no evidence below, apart from its own pleadings and arguments, that the two positions cannot lawfully co-exist, or that they are in fact the same position such that its creation (or recreation) via the 1982 Memorandum was invalid. Further, based on this court's *de novo* review of the underlying statutory authority, we find that nothing in the statutes prohibits the Governor from creating such a staff position distinct from the legal counsel position specifically provided for in 4 GCA § 4405(b). We turn next to the 1982 Memorandum itself, and examine whether it sufficed to create the position in question.

2. The 1982 Memorandum signed by Governor Calvo validly created the position of Administrative Counsel.

[20] Title 4 GCA § 6303, previously section 4107 of the Government Code, provides the mechanism by which new government positions may be created. An agency's interpretation of a statute is a question of law reviewed *de novo*. *Ada*, 1999 Guam 10 ¶ 10. "Review is limited to whether the agency's conclusion is based on a permissible construction of the statute." *Id.* (citations and quotation marks omitted).

[21] Section 6303 specifically allowed the Governor to create new positions when necessary for the efficient performance of the duties and functions of the government. In order to effect this, the Governor must submit the position description to the CSC within thirty days of creating the position. The CSC must then approve the creation of the position within ninety days after the

⁶ This declaration points out that Kono's lateral transfer from the Department of Law to the CSC Administrative Counsel position was in accordance with CSC merit system rules. The position of Administrative Counsel was, at the time of Kono's hire, included within the CSC's personnel budget approved by the legislature in the annual appropriation act.

⁷ This declaration and its accompanying documents show that the position of Administrative Counsel was funded in the CSC's personnel budget, which the legislature approved in the annual appropriation act in effect, at the time Hogan resigned and Kono was hired.

Governor submits the description, otherwise the position shall terminate. *Id.* Because we have found that nothing in the code prevents the establishment of separate positions of legal counsel and Administrative Counsel, we therefore find that the Administrative Counsel was a *new* position when it was established in the 1982 Memorandum.

[22] In this memorandum, the CSC requested from Governor Calvo the creation of five new CSC staff positions. The memorandum set forth the CSC's reasons for requiring the additional positions. By signing the memorandum on September 24, 1982, Governor Calvo concurred in the recommendation that these five positions be created. The CSC regarded this as a proper, statutorily-authorized means to create these new positions. The Attorney General challenges the validity of this memorandum based on the fact that it did not originate from the Governor to the CSC, but rather, from the CSC to the Governor. This, however, is an irrational extolling of form over substance.

[23] As is clear on the face of the statute, the purpose is to allow for the creation of new positions when necessary for efficient government operations. The CSC's interpretation is not impermissible or contrary to intent of the legislature. *See Ada*, 1999 Guam 10 ¶ 10. An affected agency in need of new positions may have to somehow alert the Governor that there is such a need in order for the Governor to exercise his authority and create these positions. In this case, the government entity in need of positions just happened to be the same entity ultimately tasked with approving the creation of these positions. Had it been a government entity other than the CSC writing to the Governor requesting the creation of new positions for its agency, and then the Governor seeking approval from the CSC for such, the Attorney General would likely not complain. That the CSC expressed its own need for new positions to the Governor by initiating this memorandum should not undermine the validity of these positions or otherwise be deemed

an *ultra vires* act on the part of Governor Calvo or Ronald Aguon, the then-Executive Director of the CSC.

[24] Perez and Kono produced evidence below that the position of Administrative Counsel was created by Governor Calvo in 1982 as a classified position, with the incumbent of that position serving in both the legal and the administrative realm for the CSC. *See* Kono's SER at 7-9 (Dep. of Luis Baza, April 6, 2006);⁸ *see also id.* at 1-3 (First Decl. of Juan Calvo, Mar. 28, 2006).⁹ We find that, as a matter of law, § 4107 of the Government Code, codified as 4 GCA § 6303, serves as valid authority for Governor Calvo to have created the position of Administrative Counsel and that, by his signing of the 1982 Memorandum, Governor Calvo sufficiently executed this authority.

3. The Attorney General failed to discharge its burden at the Summary Judgment proceedings.

[25] Through the declarations and other evidence submitted below, Perez and Kono met their initial burden as movants, pointing out a lack of evidence to support the Attorney General's case. The burden then shifted to the Attorney General to produce evidence showing that Governor Calvo did not have the legal authority to create the CSC staff position of Administrative Counsel, and that the position of Administrative Counsel is really the same position as the unclassified legal counsel already provided for by 4 GCA § 4405(b). The Attorney General's attempt to

⁸ The deposition of Baza, former Executive Director of the CSC, established that the Administrative Counsel position had always been in the classified service, and that the individual holding this position works not only for the Board, but for the Executive Director and the CSC staff. Further, Baza stated in his deposition the process by which the Governor may create new positions.

⁹ Through this declaration by the CSC Personnel Management Administrator, together with the accompanying documents, Perez and Kono presented evidence to support their argument that the Administrative Counsel is both an administrative and a legal position, and that it was validly created by Governor Calvo as a classified position through § 4107 of the Government Code. Moreover, Calvo's declaration and supporting documents tend to establish that at the time Kono transferred from the Department of Law to the CSC, through 4 GCA § 4114, the position of Administrative Counsel was properly in the classified service.

rebut the movants' evidence below came solely by way of argument and speculation – hypothesizing that Governor Calvo may have perhaps been tricked or duped into signing this memorandum without really knowing what he was doing. Nothing in the record suggests that this was the case. The Attorney General did not present any evidence to this effect, such as a declaration by Governor Calvo that he was in fact tricked. No supporting documentation of any kind was presented. Nor did the Attorney General make any assurances to the lower court that it had any reason to believe that this was true. It would be an understatement to say that this argument falls short of the specific facts and legal standards that the Attorney General was required to present on this point.

[26] The United States Supreme Court, in addressing the requirements of Rule 56(c) of the Federal Rules of Civil Procedure, which Guam's statute mirrors, stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, *there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.* The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (emphasis added).

[27] Perez and Kono made an initial showing through competent evidence that the Administrative Counsel position was validly created as a classified position, and that it remained classified at the time Kono assumed the position. While the court must view the evidence and draw inferences in the light most favorable to the Attorney General, the Attorney General must still produce some rebuttal evidence. *See Iizuka*, 1997 Guam 10 ¶ 21.

[28] Showing that the lack of authority for Governor Calvo to create the CSC Administrative Counsel position distinct from the legal counsel position is essential to the Attorney General's claim. Once Perez and Kono discharged their burden, the Attorney General was required to produce evidence demonstrating that Governor Calvo acted *ultra vires* of his authority and that this position was really the legal counsel position already created by statute as unclassified. *See Kim*, 1997 Guam 11 ¶¶ 6-7. The Attorney General wholly failed in this regard.

[29] It is settled law that, in a summary judgment proceeding, the non-moving party may not merely rely on unsupported or conclusory allegations contained in the pleadings, but must present some significant probative evidence tending to support the assertions. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Here, the Attorney General simply presented to the lower court its own arguments and allegations, with no significant probative evidence to support these allegations. *See Iizuka*, 1997 Guam 10 ¶ 8. These are, without more, insufficient to stave off a grant of summary judgment for Perez and Kono. Summary judgment, therefore, was properly granted.

B. CSC Resolution No. 99-005 and CSC Resolution No. 2003-002

[30] The Attorney General also contends that the CSC's passage of Resolution No. 99-005 effectively removed the position of Administrative Counsel from the classified service and placed it into the unclassified service. Perez and Kono argue that the act of summarily removing a position from the classified service in such a fashion would itself be a violation of the merit system. The court, however, need not reach the issue of whether the CSC may alter the classification status of a government position in such a manner, as this determination would be of no consequence to the outcome of the case. This is so because, even if the CSC's enabling authority (4 GCA § 4403) would allow the CSC to make such determinations, this power should

apply equally to the 1999 resolution (making the Administrative Counsel position unclassified) and to the 2002 resolution (placing it back in the classified service).¹⁰

V. CONCLUSION

[31] The lower court did not err in granting summary judgment in favor of Perez and Kono, as the Attorney General failed to present any rebuttal evidence supportive of its claims. In particular, the Attorney General presented no specific facts tending to show that the positions of Administrative Counsel and legal counsel are in fact the same position, or that the 1982 Memorandum did not validly create a classified Administrative Counsel staff position. We find as a matter of law that nothing in the statutes prohibits the creation of a classified Administrative Counsel position separate from the unclassified legal counsel position provided for in 4 GCA § 4405(b). We further find that the 1982 Memorandum signed by Governor Calvo was sufficient to validly create the position of Administrative Counsel within the classified service, pursuant to the authority set forth in § 4107 of the Government Code, codified as 4 GCA § 6303, and that Governor Calvo did not therefore act without authority.

[32] As a result, the court need not reach the issues of estoppel and laches raised by Perez and Kono, nor do we reach the issue of whether the classification status of the legal counsel position in 4 GCA § 4405(b) satisfies the requirements set forth in *Haeuser v. Dep't of Law*, 97 F.3d 1152 (9th Cir. 1996). *See* n.4.

¹⁰ The Attorney General also argues that the passage of Resolution No. 2003-002 was illegal or unauthorized because it was passed after, and in contravention of Public Law 26-121. However, a review of the legislative history suggests that the restriction of jurisdiction pronounced in the public law was not some new restriction that the legislature was placing on the CSC. Rather, it was a clarification to the CSC that its jurisdiction never extended to those persons not in the classified service. *See* Guam Pub. L. 26-121 (Aug. 15, 2002) (Legislative Findings and Intent). The language added by Public Law 26-121, therefore, seems merely to be surplusage, not enlarging or taking away any power or authority that the CSC had before its passage.

[33] Accordingly, the lower court's decision granting Perez and Kono's Motion for Summary Judgment is hereby **AFFIRMED**.

Original Signed - **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed - **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed - **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice