



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

ELIZABETH BARRETT-ANDERSON,
Attorney General of Guam,
Plaintiff-Appellant/Cross-Appellee,

v.

JOHN P. CAMACHO, Director,
Guam Department of Revenue & Taxation;
EDDIE BAZA CALVO, Governor of Guam;
ATLAS AMUSEMENT ENTERPRISES, INC.;
DARRYL R. STYLES d/b/a D&D GAMES;
GUAM MUSIC, INC.; and DOES 1-10,
Defendants-Appellees/Cross-Appellants.

Supreme Court Case No. CVA16-014
Superior Court Case No. CV0780-13

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted on February 20, 2018
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] This appeal involves a decade-long dispute between the Attorney General of Guam (“Attorney General”) and the Guam Department of Revenue & Taxation (“DRT”) over the validity of gaming device regulations. *See Limtiaco v. Camacho*, 2009 Guam 7; *Rapadas v. Benito*, 2011 Guam 28; *Barrett-Anderson v. Camacho*, 2015 Guam 20. Plaintiff-Appellant/Cross-Appellee Elizabeth Barrett-Anderson, Attorney General of Guam, seeks review of a Superior Court order requiring her office to pay for DRT’s independent counsel in the ongoing litigation. Attorney General Barrett-Anderson alleges that this order invades her executive discretion and violates the separation of powers. Defendants-Appellees/Cross-Appellants John P. Camacho, Director of Guam Department of Revenue & Taxation; Eddie Baza Calvo, Governor of Guam; Atlas Amusement Enterprises, Inc.; Darryl R. Styles d/b/a D&D Games; and Guam Music, Inc. seek review of a Superior Court order denying their request to disqualify the Attorney General’s Office from the entire case due to its representation of DRT in a prior, related suit.

[2] For the following reasons, we reverse the trial court’s order directing the Attorney General to pay for DRT’s independent counsel and affirm the trial court’s order denying disqualification of the Office of the Attorney General.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In 2008, the Acting Governor of Guam ordered DRT to issue licenses to gaming device owners, and departed from the position stated in the “License Non-Renewal Notices” previously issued by DRT in consultation with the Attorney General, *see Rapadas v. Benito*, 2011 Guam 28

¶ 4; *Limtiaco v. Camacho*, 2009 Guam 7 ¶¶ 2-3. DRT complied with the order of the Acting Governor.

[4] Several actions in the Superior Court ensued.

[5] In SP0141-08—originally entitled *Limtiaco v. Cruz*¹—then-Attorney General Alicia Limtiaco filed a special proceeding against DRT Director Camacho seeking a court order for the Director to revoke the licenses. As the special proceeding neared its end, Deputy Attorney General J. Patrick Mason was assigned to the case and appeared on the record as representing both Petitioner Attorney General and Respondent DRT Director John P. Camacho.

[6] In SP0219-08, Guam Music, Inc. sued the DRT Director and sought a writ of mandamus to direct the issuance of the licenses. This case was filed after SP0141-08. DRT asked to be represented by the Attorney General’s Office in SP0219-08 and executed a waiver regarding any conflict with SP0141-08.

[7] Issues from both special proceedings were appealed to this court, and we issued a consolidated decision. On remand, the trial court entertained several matters related to both proceedings in a consolidated fashion; Deputy Attorney General Mason participated in both proceedings. At that time, the Attorney General and DRT had a unified position. Both proceedings were dismissed by the parties.

[8] After the parties dismissed the special proceedings, Deputy Attorney General Mason filed the present declaratory judgment action. The Superior Court initially dismissed the action, holding that the Attorney General failed to first exhaust administrative remedies before filing suit. We reversed, holding that it would have been futile for the Attorney General to exhaust administrative remedies. In *Barrett-Anderson v. Camacho*, 2015 Guam 20, DRT also challenged

¹ Due to changes in government officials, the case names used reflect the style of the case at the time each document was filed. The case numbers, however, do not change.

the Attorney General's standing. DRT argued that the Attorney General was laboring under a conflict of interest in violation of Rules 1.7 and 1.9 of the Guam Rules of Professional Conduct, which deprived her of standing to appeal. We declined to rule on the merits of the challenge and noted that the proper vehicle to challenge conflicts of interest lies in a Motion to Disqualify, not a Motion to Dismiss for Lack of Standing.

[9] On remand, renewing alternative bases raised in its prior Motion to Dismiss, DRT sought disqualification of the Attorney General's Office and appointment of independent counsel for DRT paid by the Attorney General. The Superior Court refused to disqualify the Attorney General's Office because Deputy Attorney General Mason did not encounter confidential information during his prior representation of DRT, and he had since retired. The Superior Court, however, ordered the Attorney General to pay for DRT's independent counsel because the Attorney General's Office ordinarily has the duty to represent executive branch agencies.

[10] Both parties sought interlocutory review, which we granted.

II. JURISDICTION

[11] This court has jurisdiction to review an interlocutory order of the Superior Court when we determine that resolution of the questions of law on which the order is based will: (1) materially advance the termination of the litigation or clarify further proceedings therein; (2) protect a party from substantial and irreparable injury; or (3) clarify issues of general importance in the administration of justice. *See* 7 GCA § 3108(b) (2005); *see also* 48 U.S.C.A. § 1424-1 (Westlaw through Pub. L. 115-231 (2018)); *People v. Angoco*, 2006 Guam 18 ¶¶ 14-28; *Barrett-Anderson v. Camacho*, CVA16-014 (Order Granting Permission to Appeal, Apr. 5, 2017).

III. STANDARD OF REVIEW

[12] This court reviews questions of law *de novo*. See *Guam Resorts, Inc. v. G.C. Corp.*, 2013 Guam 18 ¶ 33 (citing *Yoshida v. Guam Transp. & Warehouse, Inc.*, 2013 Guam 5 ¶ 20).

IV. ANALYSIS

[13] We granted interlocutory review of two questions. First, we agreed to review DRT and Governor Calvo’s allegation of error that the Superior Court failed to properly apply an appearance of impropriety standard and failed to impute a retired attorney’s professional conflict to the entire Attorney General’s Office. Order Granting Permission to Appeal at 3-4. Second, we agreed to review whether the Superior Court’s order directing the Attorney General to pay for DRT’s independent counsel is lawful and whether it violates the separation of powers. *Id.* at 2.

A. The Trial Court Did Not Err in Denying DRT’s Request to Disqualify the Office of the Attorney General

[14] “[D]isqualification is a drastic course of action that should not be taken simply out of hypersensitivity to ethical nuances or the appearance of impropriety.” *Roush v. Seagate Tech., LLC*, 58 Cal. Rptr. 3d 275, 281 (Ct. App. 2007). When considering disqualification, “we must be solicitous of a client’s right freely to choose his counsel[,] a right which of course must be balanced against the need to maintain the highest standards of the profession.” *Gov’t of India v. Cook Indus., Inc.*, 569 F.2d 737, 739 (2d Cir. 1978). DRT and Governor Calvo invite us to employ a harsh remedy—disqualification—against the entire Attorney General’s Office because a now-retired Deputy Attorney General previously represented DRT in the dismissal of a related action. DRT and Governor Calvo argue that this prior representation creates an “appearance of impropriety” and warrants removal of the entire Attorney General’s Office. We disagree.

1. The proper test for attorney disqualification in Guam is whether an attorney's continued representation or participation in a matter violates or significantly risks violating the Guam Rules of Professional Conduct.

[15] As an initial matter, the parties disagree over the appropriate standard governing attorney disqualification in Guam. DRT and Governor Calvo argue that attorney disqualification is governed by the “appearance of impropriety” standard. The Attorney General argues that the standard for disqualification of an attorney requires a showing of prejudice, not merely the appearance of impropriety. We now outline the applicable standard and its development.

[16] In *People v. Tennessen*, 2009 Guam 3, this court disqualified the entire Attorney General's Office when a personally-conflicted Attorney General breached a previously-imposed conflict wall. *See id.* ¶¶ 33, 51. We applied the “appearance of impropriety” standard in that criminal action because of the ineffectiveness of the conflict wall. *Id.* ¶ 43. DRT and Governor Calvo read this as adopting the “appearance of impropriety” standard for disqualification in all cases. This is mistaken.

[17] When the Model Rules of Professional Conduct were introduced, they eliminated the “appearance of impropriety” standard that previously governed attorney disqualification. *See, e.g., Waters v. Kemp*, 845 F.2d 260, 265 & n.12 (11th Cir. 1988). The now-abrogated “appearance of impropriety” test previously appeared in the American Bar Association's (ABA) Code of Professional Responsibility. *Id.* at 265. Most recently, Guam adopted the 2002 ABA Model Rules of Professional Conduct on September 29, 2003, and memorialized the action on February 11, 2004, through Promulgation Order 04-002. *Re: Amendments to the Guam Rules of Professional Conduct*, PRM04-002 (Promulgation Order No. 04-002, Feb. 11, 2004). *Compare* Guam R. Prof'l Conduct (2003), *with* Model Rules of Prof'l Conduct (Am. Bar. Ass'n 2002). Under the Model Rules, attorney disqualification is warranted only when his or her

representation violates or significantly risks violating the Rules of Professional Conduct. *See, e.g., Bottoms v. Stapleton*, 706 N.W.2d 411, 416 (Iowa 2005). The rules-based approach has been adopted in a litany of other jurisdictions. *See, e.g., Klein v. Bristol Hosp.*, 915 A.2d 942, 953 n.22 (Conn. Super. Ct. 2006); *Ex parte Terminix Int'l Co.*, 736 So. 2d 1092, 1095-96 (Ala. 1998); *Schwartz v. Cortelloni*, 685 N.E.2d 871, 878 (Ill. 1997); *Barragree v. Tri-County Elec. Coop., Inc.*, 950 P.2d 1351, 1362-63 (Kan. 1997); *Adoption of Erica*, 686 N.E.2d 967, 973 & n.10 (Mass. 1997); *In re Marriage of Carter*, 862 S.W.2d 461, 465 (Mo. Ct. App. 1993); *Emerald Partners v. Berlin*, 564 A.2d 670, 677 (Del. Ch. 1989). Even in certain jurisdictions that discussed the “appearance of impropriety” language after the adoption of the Model Rules, appearances alone were insufficient to warrant disqualification. *See, e.g., Bergeron v. Mackler*, 623 A.2d 489, 494 (Conn. 1993). The *Bergeron* court stated: “Although considering the appearance of impropriety may be part of the inherent power of the court to regulate the conduct of attorneys, it will not stand alone to disqualify an attorney in the absence of any indication that the attorney’s representation risks violating the Rules of Professional Conduct.” *Id.* Standing alone, the “appearance of impropriety” standard is open to widespread abuse and exploitation for tactical advantage. *See, e.g., Adam v. Macdonald Page & Co.*, 644 A.2d 461, 464 (Me. 1994) (“If a former client need merely allege that she made relevant confidential communications to her former attorney, then the rule will be an obvious vehicle for abuse.”). The “significantly risk” portion of the test does not allow disqualification for potential conflict, but for inevitable and material conflicts. *Bottoms*, 706 N.W.2d at 417 (“[W]e first note that the concept of a *potential* conflict of interest is foreign to the new ethical rule.”).

[18] In *Tennessee*, our prior authority on attorney disqualification, we specifically noted the applicability of that decision to *criminal* cases involving disqualification under common law

authority. 2009 Guam 3 ¶ 39. Tennesen’s criminal case was filed June 18, 2002, *see* People v. Tennesen, CF0292-02 (Indictment, June 18, 2002), prior to the adoption of the 2003 Guam Rules of Professional Conduct. Guam originally adopted a version of the Model Rules of Professional Conduct in 1984. *See* Guam Pub. L. 17-062 (Aug. 17, 1984) (codified at Guam Gov’t Code § 28057 (1970), later codified at 7 GCA § 9A208 (2005)). In this provision, the law states that the “Model Code of Professional Conduct” governs attorney ethics. This title appears to be a combination between the old ABA Model Code of Professional Responsibility and the newer ABA Model Rules of Professional Conduct. During this regulatory period, the Superior Court generally applied the new *Rules*, despite the mislabeling. *See, e.g.*, Gov’t of Guam v. FHP, Inc., CV0809-89 (Dec. & Order at 6 n.3, Oct. 17, 1989). When attorney ethics were governed by the imprecise statute, significant confusion existed as to how attorney conduct should be regulated. One trial court even referred to the applicable standard as the “Model Rules of Professional Responsibility.” *See* I&F Corp. v. Tumon Hillside Corp., CV0564-90 (Dec. & Order at 4, Feb. 5, 1991). It was not until 1993 that this court had the power to regulate attorney ethics. *See* Frank G. Lujan Memorial Court Reorganization Act of 1992, Guam Pub. L. 21-147:2 (Jan. 14, 1993) (codified at 7 GCA § 9101 (2005)). We did not exercise that authority until 2003. *See* Promul. Order No. 04-002. In the interim, the Superior Court used the Model Rules as “rules of reason.” *See* *Estate of Benavente v. Maquera*, 2000 Guam 9 ¶ 11. The 2003 adoption of the Guam Rules of Professional Conduct was the first attorney conduct regulatory scheme expressed by this court under a unified Guam judiciary. As Tennesen was indicted prior to the adoption of the current rules, application of the “appearance of impropriety” standard was warranted. Given this unique history of Guam’s judiciary, this appeal presents the first opportunity for us to state and clarify the standard for attorney disqualification. In analyzing our

past authority, the interceding legislative changes, and the judiciary’s historical development, we find that the “appearance of impropriety” standard ceased to be the standard for attorney disqualification after the 2003 adoption of the Guam Rules of Professional Conduct for criminal actions filed after the rules’ effective date and for all subsequent attorney conduct in pending civil cases.

[19] Our opinion in *Tenessen* is consistent with this history and determination. When indictments pre-date the current rules, additional standards for disqualification of prosecutors may exist or be employed when a defendant’s constitutional rights risk being violated—including rights to a fair trial and due process. *See, e.g.*, U.S. Const. amends. V-VI; 48 U.S.C.A. § 1421b (u) (Westlaw through Pub. L. 115-231 (2018)). In *Tenessen*, beyond concern with the rules alone, we were also required to analyze fairness to a defendant who was a witness against the Attorney General in a criminal trial, where the Attorney General attempted to breach the conflict wall and interfere with an unbiased prosecution, 2009 Guam 3 ¶ 7. The conflict there was more personal than professional. *See id.* ¶ 33. In criminal cases, like *Tenessen*, disqualification to remove suggestions of vindictive *personal* bias advances the government interest in obtaining impartial justice. *Id.* ¶¶ 29-31. On this point, we stated in *Tenessen* that “nothing in this opinion should be construed as either mandating or prohibiting recusal of the AG’s Office at the present time, given that Moylan is no longer Attorney General of Guam.” 2009 Guam 3 ¶ 50. In fact, the Superior Court allowed the Attorney General’s Office to resume prosecution upon remand. *See, e.g.*, *People v. Tennessen*, CF0292-02 (Plea Agreement, June 28, 2011). We do not read *Tenessen* 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.

[20] In clarifying our law, we hold that the current standard for attorney disqualification is whether an attorney's continued representation of a party or participation in an action violates or significantly risks violating the Guam Rules of Professional Conduct.

2. The Attorney General's pursuit of this case does not violate or significantly risk violating the Guam Rules of Professional Conduct

[21] Having determined that the Guam Rules of Professional Conduct generally govern disqualification, we must now decide whether the Attorney General's continued participation in this case, CV0780-13, violates or significantly risks violating the Guam Rules of Professional Conduct. Specifically, the question before us is whether now-retired Deputy Attorney General Mason's prior representation of DRT in an allegedly-related action is grounds for disqualifying the entire Attorney General's Office in this case.

[22] DRT and Governor Calvo allege that Deputy Attorney General Mason's representation of DRT, in SP0141-08 for purposes of dismissal, is an incurable conflict that prevented him from ethically bringing this action. Appellees' Br. at 5-10 (Aug. 18, 2017). DRT and Governor Calvo argue that this conflict must be imputed to the entire Attorney General's Office. *Id.* at 10-14. To support their position, DRT and Governor Calvo point to Guam Rules of Professional Conduct 1.7(b)(3) and 1.10(a). *Id.* at 8-11. The Attorney General argues that any potential conflict was waived and that the present suit is not substantially related to the prior special proceedings. Appellant's Reply Br. at 11-24 (Sept. 18, 2017). The Attorney General also argues that courts must tread cautiously before disqualifying the Attorney General's Office because the Guam Rules of Professional Conduct do not apply mechanically to the Attorney General. *Id.* at 31-37.

[23] Deputy Attorney General Mason's representation of both a petitioner and a defendant in SP0141-08, while operating under a waiver of conflict, is highly unusual and may have provided a substantial basis for complaining about his actions in that case. However, our focus is not

whether Deputy Attorney General Mason was conflicted in SP0141-08; it is whether he or the Attorney General's Office is conflicted in *this case*. The short answer is: no.

[24] We begin by rejecting the Attorney General's request for flexibility under the Guam Rules of Professional Conduct based on her unique position as the Chief Legal Officer of the Government of Guam. *See* 48 U.S.C.A. § 1421g(d)(1) (Westlaw through Pub. L. 115-231 (2018)). We recognize that the Attorney General is in a unique position, but also read certain rules as deliberately providing flexibility for government attorneys. *See, e.g.*, Guam R. Prof'l Conduct 1.11, 3.6(d), 7.6. Indeed, in all cases, rules of professional conduct are not to be mechanically applied. *See, e.g., Aetna Cas. & Sur. Co. v. United States*, 570 F.2d 1197, 1202 (4th Cir. 1978). The rules authorize courts "to protect the public and maintain public confidence in the legal profession," and "to deter the misconduct of others." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728, 737 (Iowa 2016) (citations omitted). If the Attorney General seeks exceptions or changes to the rules, she should pursue those through the proper administrative channels for amending the rules, not through judicial interpretation. *See In re Seastrunk*, 236 So. 3d 509, 519 n.9 (La. 2017).

[25] Next, we take notice that DRT and Governor Calvo have directed our attention to rules inapplicable to this case. While DRT alleges that Deputy Attorney General Mason may have obtained confidential information in the course of representing DRT in a prior, now-dismissed action—SP0141-08—DRT does not show how this violates the rules. DRT and Governor Calvo argue that the Attorney General is conflicted under Rule 1.7. However, Rule 1.7 deals with conflicts of interest related to current clients. *See* Guam R. Prof'l Conduct 1.7. DRT, for present purposes, is not a current client of the Attorney General. In this case, DRT is a former client of

the Attorney General. Duties to former clients are governed by Rule 1.9. *See* Guam R. Prof'l Conduct 1.9.

[26] Irrespective of the applicable rule, DRT has not established that the Attorney General or her office has a conflict. In fact, even if Deputy Attorney General Mason were still employed at the Attorney General's Office, no conflict exists in *this case* as a matter of law. Both Rules 1.7 and 1.9 prohibit a lawyer from representing a client where certain conflicts exist. Rule 1.7(a) states, in part: "Except as provided in paragraph (b), a lawyer shall not *represent a client* if the representation involves a concurrent conflict of interest." Guam R. Prof'l Conduct 1.7(a) (emphasis added). Rule 1.9(a) states:

A lawyer who[] has formerly represented a client in a matter shall not thereafter *represent another person* in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Guam R. Prof'l Conduct 1.9(a) (emphasis added). Rule 1.9(b) states, in part: "A lawyer shall not knowingly *represent a person* in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client" Guam R. Prof'l Conduct 1.9(b) (emphasis added). These provisions are not implicated in this case. We previously held in *Attorney General of Guam v. Gutierrez*, 2011 Guam 10, that the Attorney General has broad common law powers "to bring suit to challenge laws which he believes to be unconstitutional." 2011 Guam 10 ¶ 32 (quoting 5 GCA § 30103 (2005)). We confirmed the Attorney General's individual standing in the present case when we held that she was an "aggrieved party" entitled to appeal. *See Barrett-Anderson*, 2015 Guam 20 ¶¶ 18-20. In *Barrett-Anderson*, we stated, "[S]tanding concerns a party's relationship to a dispute, not an attorney's." *Id.* ¶ 20. This leads, undoubtedly, to the conclusion that the Attorney General is a party in this suit and is acting on behalf of herself and her office. The Attorney General is not representing a

client or person, but is instead bringing suit on her own behalf. Rules 1.7, 1.9(a) and 1.9(b) do not cover an attorney's *pro se* activities. *See, e.g., In re Wood*, 634 A.2d 1340, 1342-43 (N.H. 1993). Thus, these rules are not implicated here.

[27] Now, we turn our attention to the singular rule that is implicated here—Rule 1.9(c). Rule 1.9(c) states:

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Guam R. Prof'l Conduct 1.9(c). This is the only applicable rule because the present suit is a claim between the original lawyer—the Attorney General—and the former client—DRT. While the trial court determined that Deputy Attorney General Mason did not encounter any confidential information in the course of representing DRT, we will assume that he may have obtained some confidential information. We will even assume, without deciding, that Mason violated the Guam Rules of Professional Conduct in his dual representation of adverse parties in SP0141-08. However, even if he had obtained confidential information during the course of conflicted representation, Rule 1.9(c) allows a lawyer to reveal information as other Rules permit. Rule 1.6 allows a lawyer to reveal confidential information to the extent reasonably believed necessary “to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client” Guam R. Prof'l Conduct 1.6(b)(3); *see also Spratley v. State Farm Mut. Auto. Ins. Co.*, 78 P.3d 603, 608-09 (Utah 2003) (allowing former in-house

counsel to disclose client confidences to establish wrongful discharge claim). Even under a set of facts most favorable to DRT and Governor Calvo, the Attorney General's Office would not be conflicted and did not violate any ethical rules, because Rules 1.6 and 1.9 permit such disclosure. Without a conflict or violation, no request to disqualify can be properly granted.

[28] We hold that the Superior Court did not err in denying DRT and Governor Calvo's request to disqualify the Attorney General.

B. The Trial Court Unlawfully Ordered the Attorney General to Pay for DRT's Independent Counsel

[29] As the Attorney General can continue to prosecute this action in her own name, we must now review the Superior Court order requiring the Attorney General to pay for DRT's independent counsel. The Superior Court ordered the Attorney General to pay for DRT's independent counsel, reasoning that the Attorney General, in her role as Chief Legal Officer, ordinarily is required to represent DRT. *See* Record on Appeal ("RA"), tab 90 at 19-20 (Dec. & Order, May 5, 2016). The Superior Court also found that 5 GCA § 30102 puts the general costs of litigation in the Attorney General because she has "cognizance of all legal matters . . . involving the Executive Branch of the government of Guam." *See id.* at 15-19 (quoting 5 GCA § 30102 (2005)). The Attorney General argues that the trial court's order violates the separation of powers by invading "an internal decision-making process of the executive branch." Appellant's Reply Br. at 11-24.

[30] This court takes separation of powers challenges seriously, *Calvo v. I Mina' Trentai Kuåtto Na Liheslaturan Guåhan*, 2018 Guam 6 ¶¶ 9, 16, and has invalidated government actions on that basis, *see, e.g., In re Request of Gutierrez*, 2002 Guam 1 ¶ 45 (invalidating the legislature's attempt to set specific positions and salaries for all executive branch employees); *People v. Camacho*, 1 Guam R. 501, 504-05, 511 (1975) (invalidating the judicial appointment

of an independent special prosecutor as a judicial invasion of executive functions). However, where statutes can be construed to avoid constitutional questions, this court will not answer the question of constitutionality or organicity. *See Camacho v. Estate of Gumataotao*, 2010 Guam 1 ¶ 23; *cf. United States v. Rumely*, 345 U.S. 41, 48 (1953) (“Grave constitutional questions are matters properly to be decided by this Court but only when they inescapably come before us for adjudication.”). We do not need to answer the constitutional question alleged by the Attorney General, because the Guam Legislature has enacted a statutory scheme that requires DRT to pay for its own counsel.

[31] The operative statute, which was relied on by the Superior Court to order the Attorney General to pay for DRT’s independent counsel, is 5 GCA § 30102. The statute requires the opposite result. The statutory provision states, in part:

Where any other law permits any agency or autonomous public corporation to retain counsel other than the Attorney General, this shall *not* preclude said agency or public corporation from requesting the services of the offices of the Attorney General, provided that said agency or autonomous public corporation shall reimburse the Office of the Attorney General for such services from funds of said agency or autonomous public corporation.

5 GCA § 30102 (2005). Another relevant statutory provision, overlooked by both the Superior Court and the litigating parties, permits DRT to appoint counsel other than the Attorney General. *See* 11 GCA § 1106.1 (added by P.L. 28-175:3 (Jan. 29, 2007)). The relevant statutory section creates “within the Department of Revenue and Taxation the Office of the Principal Guam Territorial Income Tax Attorney.” *Id.* The Principal Guam Territorial Income Tax Attorney shall, among other duties, “[r]epresent the Director of Revenue and Taxation in court and administrative proceedings in legal matters in which the Department is interested.” *Id.* § 1106.1(c)(3).

[32] While 5 GCA § 30102 allows DRT to request the services of the Attorney General and the Attorney General has cognizance over DRT’s legal matters, DRT must reimburse the Office of the Attorney General for such services from funds of said agency. *See* 5 GCA § 30102. We interpret this to mean that DRT must pay for its attorney of choice when it decides not to, or for whatever reason cannot, use the services of the Principal Guam Territorial Income Tax Attorney or the Attorney General. We offer no opinion regarding who pays for legal services of agencies that lack permission to retain counsel other than the Attorney General. Today, it is sufficient to find that the Legislature provided that DRT must pay for its legal services in cases such as this. Therefore, the trial court erred in ordering the Attorney General to pay for DRT’s independent counsel.

V. CONCLUSION

[33] We **AFFIRM** the portion of the Superior Court’s May 5, 2016 Decision & Order denying disqualification of the Attorney General’s Office and **REVERSE** the portion of the order directing the Attorney General to pay for DRT’s independent counsel.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice