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Dear Chief Ignacio,

Please accept for filing, investigation, and disposition the attached criminal complaint and attached supporting documents at the Guam Police Department, or, at your discretion, referral to the Guam Attorney General.

I am a Government of Guam retiree and member of the Defined Benefit Plan. I worked at the Guam Office of Attorney General (OAG) as an attorney for over sixteen years. I retired on May 29, 2007. I was part of the management of the AGO from January 1, 2003 to December 31, 2006, serving as a Deputy Attorney General during that time. I am a member (inactive) of the Guam and CNMI Bar Associations, and a member (retired) of the Alaska Bar Association.

This criminal complaint seeks an order of restitution from the Guam Superior Court against six (6) attorneys who served in the management of the AGO from 2007 to 2014. The Superior Court's jurisdiction to order such restitution would be based on the Court finding these attorneys violated statutes criminalizing Official Misconduct and/or making False Statements. See attached draft criminal complaint and supporting documentation, as well as recent photo of myself.

The victims of this criminal conduct were the Government of Guam Retirement Fund (Retirement Fund), and the Government of Guam General Fund (General Fund)

As a result of these six (6) Government attorneys' criminal conduct, the Retirement Fund suffered losses in the amount of approximately \$535,519.34 (exclusive of lost return on investment), and the General Fund suffered losses of approximately \$294,055.68 (exclusive of interest), for a total of approximately \$829,575.52. These are the amounts sought in restitution. The foregoing figures do not include an additional \$43,368.75 (approximately) in damages that is still recoverable in a civil action from two of the Government attorneys. (See footnote 74 of attached Draft Criminal Complaint)

Charges brought by my criminal complaint can be timely filed. The statute of limitations for filing criminal charges in court against the six (6) Government attorneys expires on or about August 11, 2020. This is three years after August 11, 2017, when former Government of Guam Chief Prosecutor Phillip Tydingco (Tydingco) retired. The applicable statute of limitations provides that criminal charges for any offense based upon misconduct in office can be brought as late as three years after the GovGuam officer or employee committing the misconduct leaves office, regardless of when during the employee or officer's tenure the misconduct occurred.

The same statute of limitation provides that, within three years of the officer or employee's leaving GovGuam, charges can be brought against those who are COMPLICIT in the officer or employee's misconduct, regardless of when the complicit party's conduct occurred.

The apparent purpose of this statute of limitation is to prevent an officer or employee from using his or her office to shield from discovery his or her misconduct, and the misconduct of those complicit in his misconduct, during his GovGuam tenure, with the result that an otherwise applicable statute of limitation would expire.

In this case, Tydingco, as Chief Deputy of the OAG and Chief Prosecutor at the OAG, supported a sham contract which the other five (5) Government attorneys named in my criminal complaint were complicit in forming and perpetuating. The formation of the sham contract, and actions taken to perpetuate it, constituted the criminal conduct alleged in my criminal complaint. The sham contract caused the losses suffered by the Retirement Fund and the General Fund.

Therefore, even though the sham contract was formed in 2007, the statute of limitations has not yet expired for bringing charges against Tydingco and the five (5) Government attorneys who were complicit in the formation and support of the sham contract during the years 2007 to 2014.

Please accept my attached criminal complaint and attached supporting documents for filing. I am sending documents verifying my identity to you under a separate cover.

Thank you,

Joseph A. Guthrie

Open Note to Guam's Attorney General: Contrary to the position Tydingco took with respect to those responsible the retroactive pay increases, the Attorney General would NOT be effectively precluded from hiring a Special Prosecutor to prosecute current and former Government attorneys responsible for the above misconduct, if the Governor balks at signing a Special Prosecutor's contract.

5 GCA 5121(c) impliedly repealed the provision of 5 GCA 22601 that contracts are not EXECUTED until signed by the Governor. 5 GCA 22601 provides:

§ 22601. Execution of Contracts.

All contracts shall, after approval of the Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor.

5 GCA 5121(a) authorizes the AGO to hire lawyers on contract; and 5 GCA 5121(c) authorizes the

procurement officer of the AGO to "execute" such a contract.

The Compiler of Law's Comment to 5 GCA 5121 (set forth in relevant part, below) concludes that the Governor can review any contract, but the Governor's signature on it is not required.

"COMMENT

...

Subsection (c) recognizes that neither the Governor nor the Attorney General sign routine purchase orders - which are contracts. The [Legislative] Committee [on General Government Operations] determined that neither the Attorney General nor the Governor should be required to sign procurement contracts. However, since existing law states that all contracts are not EXECUTED until signed by the Governor, this Section must state WHEN procurement contracts are EXECUTED. If the Attorney General or the Governor wish to review any contracts, this Section will not prohibit it. (capitalization added)"

For our purposes, 5 GCA 5121(c) states WHEN a procurement contract for a Special Prosecutor would be EXECUTED, by authorizing the procurement officer of the AGO to EXECUTE such a contract. By authorizing the procurement officer of the AGO to EXECUTE such a contract, 5 GCA 5121(c) conflicts with the requirement set forth in 5 GCA 22601 that the Governor EXECUTE all contracts.

According to the rules of statutory construction, where statutes conflict, a statute enacted later in time impliedly repeals a statute enacted earlier in time. 5 GCA 5121(c) was enacted subsequent to 5 GCA 22601.

The upshot is that 5 GCA 5121(c) impliedly repealed 5 GCA 22601 and its requirement that the Governor sign contracts, at least with respect to contracts subject to the Guam Procurement Law, by authorizing the procurement officer of the AGO to execute contracts, instead of the Governor.