

PRESS RELEASE

Mary C. Torres Files Ethics Complaint against Port Legal Counsel

Mary C. Torres today filed a formal complaint with the Guam Bar Association Ethics Prosecutor alleging that Attorneys Michael F. Phillips, Jonathan R.B. Bell and the Law firm of Phillips & Bordallo, P.C. violated numerous rules of the Guam Rules of Professional Conduct while handling an investigation into a Port employee's workplace injury and worker's compensation claim. The Phillips Firm is the attorney for the Port Authority of Guam and Torres was its former General Manager.

Torres previously asserted that her termination and the Port legal counsel's so-called investigation were politically motivated. She had stated that legal counsel's reports were drafted with the intention of reaching a predetermined result and were filled with inaccuracies, distortions and poorly reasoned legal conclusions. "During my tenure as General Manager of the Port, I was critical of the delivery of legal services that the Phillips Firm was providing to the Port and the Firm's failure to timely submit invoices for payment and to properly allocate billings, so it did not surprise me that their reports prepared in conjunction with the investigation were unprofessional and misleading. Unfortunately, the Port Board members did not share my concerns regarding the haphazard investigatory reports or the potential waste and lack of accountability when dealing with the Phillips Firm."

In her ethics complaint, Torres sets forth detailed facts and provides evidence, along with citations to legal authority, supporting her belief that Phillips, Bell and the Phillips Firm committed numerous ethical violations during their investigation and in the preparation and distribution of their reports. Torres stated that Phillips has an actual adverse interest with former and current employees of the Port which was not disclosed and the failure to disclose these conflicts caused harm to her and others. She also accuses the attorneys of making false statements and misrepresentations as to their role and intent when communicating with Port employees. Torres also asked the Committee to urgently review the matter and expedite taking appropriate action because the attorneys involved in their continuing investigation have recently tried to urge a Port employee and witness to lie about Torres's involvement and threatened the witness when she refused to do so. Torres is concerned that the attorneys may be obstructing access to evidence or threatening other witnesses to offer false testimony or evidence which undermines the administration of justice. Torres believes that other individuals may have been similarly aggrieved by the actions of these attorneys.

The ethical rules Torres contends the involved attorneys violated include:

- Rule 3.1 (Meritorious Claims and Contentions) which provides in part that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein unless there is a basis in law and fact for doing so that is not frivolous. Even assuming the factual findings made by the attorneys in the Phillips reports are taken as true, which they are not, there can be no colorable good faith claim that these facts amount to a violation of criminal and civil laws as alleged in the Phillips Report. In accusing employees of violating multiple criminal and civil statutes without any basis in law or fact, the Phillips Firm, and its attorneys Bell and Phillips, violated Rule 3.1.

- Rule 4.1 (Truthfulness in Statements to Others) prohibits lawyers from making false statements to others, including making misleading statements or omissions that are equivalent of false statements. The Phillips Firm and their attorney violated Rule 4.1 by misrepresenting their role, adverse position, and adverse intentions in their communications to the Port employees. Moreover, the Phillips reports not only contained material misrepresentations of fact, but also concluded that numerous laws were violated based on these false facts.
- Rule 4.4 (Respect for Rights of Third Parties) states that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. The involved attorneys threatened criminal or civil proceedings that were not well founded to gain leverage and with no substantial purpose other than to embarrass or burden the Port employees in violation of Rule 4.4.
- Rule 4.3 (Dealing with Unrepresented Person) requires that a lawyer must disclose any adverse relationship between the lawyer's client and the third person. The attorneys involved in the Port investigation mislead the Port employees concerning their role in the investigation. By failing to disclose the true nature of the investigation and particularly that employees were being investigated for possible wrongdoing in connection with the worker's compensation matter, the Phillips Firm and attorneys Bell and Phillips violated Rule 4.3.
- Rule 8.4 (Misconduct) states that it is a professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; engage in conduct involving dishonesty, fraud, deceit or misrepresentations; and engage in conduct that is prejudicial to the administration of justice. The Phillips firm violated Rule 8.4 by including material misrepresentations, mischaracterizing actions in the handling of the workers compensation claim, and conducting itself in a deceitful and adversarial manner without disclosing their intentions. By working together to prepare and issue the Report, attorneys Bell and Phillips "knowingly assist[ed] or induce[d] another to" violate the Rules of Professional Conduct

"It is unconscionable that attorneys Phillips and Bell should be allowed to ruin the lives of innocent citizens, disregard their responsibilities as officers of the legal system, and violate the public trust and rules they were sworn to uphold and defend", adds Torres. "Attorneys are members of a profession and officers of the legal system having special responsibility for the quality of justice and a lawyer should demonstrate respect for the legal system and use the law's procedures only for legitimate purposes."

Torres stated she has complete confidence that the GBA Ethics Committee will conduct a thorough investigation into her complaint and fulfill their responsibilities to protect the public and the administration of justice from attorneys who have demonstrated by their conduct that they are unable to properly discharge their professional duties.
