

FILED

OCT 14 2005

1:47

SUPREME COURT OF GUAM
CLERK OF COURT

IN THE SUPREME COURT OF GUAM

1
2

3 **In Re:**) Case No.: ADC04-002
 4)
 5 **JOSEPH A. GUTHRIE,**)
 6)
 7 **Respondent**) **ORDER**
 8)
 9)
 10)
 11)

12 This matter comes before the court pursuant to a Statement of Objection to Private
 13 Reprimand ("Objection") filed by Respondent, Joseph A. Guthrie. In his objection, Guthrie
 14 requests that this court reject the findings of the Guam Bar Ethics Committee ("Committee"),
 15 and direct the Committee to dismiss the charges, with prejudice.

16 This court has jurisdiction to hear this Objection pursuant to 48 U.S.C. 1424-1(a)(2)
 17 (West, WESTLAW through Pub. L. 109-20 (2005)); section 9101 of Title 7 Guam Code Annotated
 18 (West, WESTLAW through Pub. L. 28-037 (2005)); Title 7 GCA 3107 (West, WESTLAW through
 19 Pub. L. 28-037 (2005)); and Rule 1 of the Guam Rules for the Discipline of Attorneys. The
 20 standard of review is *de novo*. See GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS 3(b)(1999).

A. FACTUAL AND PROCEDURAL BACKGROUND

21 In January 2002, the Guam International Airport Authority ("GIAA") opened bids for its
 22 parallel taxiway project. The lowest bidders for the project were Nippon Hodo/International
 23 Bridge Corporation ("IBC") and Black Construction Company ("BCC"). GIAA erred in its bid
 24 documents, and as a result, IBC and BCC each filed separate bid protest suits in the Superior
 25 Court of Guam¹. During 2002, the law firm of Brooks, Lynch & Tydingco, LLC ("Brooks

¹ *Black Constr. Corp. v. Gov't of Guam*, et al., Superior Court of Guam Civil Case No. CV1075-02, and *Nippon Hodo/Int'l Bridge Corp. v. Gov't of Guam*, et al., Superior Court of Guam Civil Case No. CV1550-2.

75
20052303

1 firm”) represented GIAA in both bid protest actions.

2 In January 2003, the Attorney General of Guam (“AG”) sent a letter to William
3 Thompson, the executive manager of the GIAA, advising him that if GIAA wanted to receive
4 legal services from his office, the GIAA would need to execute a memorandum of understanding
5 with the AG. On January 28, 2003, David Mair wrote to the AG and represented that his firm,
6 Mair, Mair, Spade & Thompson, P.C. (“Mair firm”), served as “General Legal Counsel” to
7 GIAA and asked that attorneys in his firm be appointed as special assistant attorneys general to
8 represent GIAA in the two lawsuits.

9 On February 13, 2003, Thompson sent a letter (“Thompson Letter”) to the AG, informing
10 him that the two lawsuits had been consolidated, and that the services of the Brooks firm had
11 been terminated and thus GIAA was in the process of seeking new private counsel. Thompson
12 requested the AG’s assistance in the lawsuit until the GIAA could retain new counsel. The
13 Thompson Letter went on to disclose that the GIAA intended to award the bid to IBC based upon
14 consultant Frank Santos’ report (“Santos Report”). A copy of this report was attached to the
15 Thompson Letter. Thompson also disclosed that the GIAA wanted to award the bid to IBC
16 pursuant to a 5 GCA section 5425(g)(i)². Thompson informed the AG of upcoming deadlines:
17 GIAA had until Feb. 23, 2003 to file a response to the at-issue memorandum filed by BCC and a
18 status conference was scheduled for March 14, 2003. The AG did not reply to the Thompson
19 Letter.
20

21 On or about February 27, 2003, GIAA retained the Mair firm as its independent counsel.
22
23
24

25 ² Section 5425(g)(i)2 of Title 5 of the Guam Code Annotated states that if the Department of Public Works, the head of the agency involved, and the attorney general make a written determination that the award of the contract without delay is necessary to protect substantial interests of Guam, then the award may be made despite a pending protest.

1 Guthrie is a Deputy Attorney General at the Office of the AG of Guam. Guthrie signed a
2 Complaint for Temporary and Permanent Injunction and for Declaratory Relief in *Attorney*
3 *General v. Thompson*, Civil No. 03-0008, which was filed at the District Court of Guam. The
4 Complaint named Thompson as defendant, and sought to enjoin him from entering into legal
5 services contracts that excluded the AG from supervising litigation. The Thompson Letter was
6 attached to the Complaint.

7 Thompson filed an Ex Parte Motion to Redact and Seal Confidential Communications
8 and the District Court of Guam granted the motion, ordered that the Thompson Letter be sealed
9 and that the AG substitute a letter from which any confidential or privileged information had
10 been redacted. Subsequently, the District Court determined that abstention was proper, and
11 accordingly dismissed the Complaint in *Attorney General v. Thompson*, CV03-008.

12 The Mair firm substituted in as counsel for GIAA in the two bid protest actions in the
13 Superior Court. Thereafter, the parties stipulated to the dismissal with prejudice of the two
14 cases, with GIAA agreeing to put the project out for rebid.

15 Thereafter, the Prosecuting Counsel for the Guam Bar Ethics Committee ("Committee")
16 filed a Specification of Charges against Guthrie in Ethics Complaint EC 03-028. The
17 Specification alleged that disclosure of the Thompson Letter and Santos Report was used to the
18 disadvantage of Thompson and GIAA and resulted in violations of Rule 1.6 (Confidentiality of
19 Information) and Rule 1.8 (Conflict of Interest; Prohibited Transactions) of the Guam Rules of
20 Professional Conduct. The Specification also stated that Guthrie had been notified of the
21 Committee's proposal of a private reprimand, but that Guthrie had indicated his rejection of the
22 proposal and further requested the case proceed to a formal hearing.
23
24
25

1 After the formal hearing on the merits, the Committee filed its Findings of
2 Fact/Conclusions of Law. The Committee decided to administer a private reprimand based on
3 the Committee's findings that Guthrie violated Rules 1.6 and 1.8 of the Guam Rules of
4 Professional Conduct. Guthrie filed his Objection appealing the decision in accordance with
5 Rule 2 of the Guam Rules for the Discipline of Attorneys.

6 B. DISCUSSION

7 1. Rule of Professional Conduct 1.6(a)

8
9 "A lawyer shall not reveal information relating to the representation of a client unless the
10 client consents after consultation. . . ." GUAM RULES OF PROF'L CONDUCT 1.6 (1994), codified as
11 Appendix F of Title 7 of the Guam Code Annotated. Guam Rule 1.6 is similar to the American
12 Bar Association ("ABA") Model Rules of Professional Conduct 1.6(a) which states, "A lawyer
13 shall not reveal information relating to the representation of a client unless the client gives
14 informed consent" MODEL RULES OF PROF'L CONDUCT 1.6(a) (2002). The Notes to the
15 Guam Rules of Professional Conduct states, "The American Bar Association, which developed
16 these Model Rules, has also provided extensive commentary, and various ethics opinions based
17 on these rules. You may find this commentary and opinions in the appropriate ABA and BNA
18 publications." Thus we turn to the ABA's Rule 1.6 and ethics opinions based on it, for guidance.

19 a. GIAA as a Prospective Client

20
21 Since the Committee does not contend that the GIAA was an actual client of the AG and
22 the record does not indicate that the AG provided any legal advice or represented the GIAA at
23 any hearing, we shall not consider whether the GIAA was an actual client of the AG. We must
24 determine, however, whether GIAA was a prospective client of the AG, entitled to the lawyer's
25

1 duty of confidentiality.

2 Although the language of Rule 1.6 refers only to “information relating to the
3 representation of a client,” lawyers have been held liable for violating Rule 1.6 where the lawyer
4 reveals information relating to the representation of a prospective client. ABA Comm. on Ethics
5 and Prof'l Responsibility, Formal Opinion 90-358 (1990) states, “A lawyer's duty of
6 confidentiality extends to a prospective client who consults a lawyer in good faith for the
7 purpose of obtaining legal representation or advice, even though the lawyer performs no legal
8 services for the would-be client and declines the representation.” *Id.* at 1. Close calls in
9 determining whether the lawyer-client relationship did exist are usually resolved in favor of
10 confidentiality. *See Confidentiality; Protected Info.; ABA/BNA Lawyer's Manual on Prof'l*
11 *Conduct Reference Manual (2003)*. The ABA states, “whether a sufficient relationship did in
12 fact exist will probably be resolved in favor of confidentiality. For example, information learned
13 during a preliminary consultation, before the formal entry of a professional contractual
14 relationship, is normally considered confidential.” *Id.* at 1. Therefore, Guthrie can be found liable
15 for violating Rule 1.6 if it is established that the GIAA was the AG's prospective client and he
16 revealed confidential information.
17

18 The Thompson Letter unequivocally requested that the AG provide legal assistance until
19 the GIAA could complete the procurement process and retain private counsel. The letter reads,
20 “GIAA respectfully requests the assistance of your office in the two civil actions until such time
21 as GIAA can complete the procurement process and retain private counsel.”

22 Guthrie argues that the GIAA was not a prospective client because its request for legal
23 representation was not made in good faith. Guthrie argues that the GIAA was already
24 represented by the Mair firm, and that the GIAA had another motive for seemingly asking for
25

1 legal representation: being able to hire private counsel without the AG's approval which was
2 required by Guam law. At the Committee hearing, Guthrie's attorney argued, "I can tell a more
3 likely explanation is an attempt to buttress their argument down the road that, 'Listen, we are in
4 desperate need to get counsel in these bid protest actions...and since the attorney general didn't
5 immediately accept our February 13 request, we had no choice to but to immediately hire the
6 Mair firm.'" Transcript of Proceedings, May 13, 2004, p. 66. Guthrie's attorney also ventured the
7 argument that the Mair firm had already been working for the GIAA and had possibly even
8 written the Feb. 13, 2003 letter. GIAA was thus not truly without counsel or in need of the AG's
9 legal assistance.

10 But as we noted in our opinion in *A.B. Won Pat Guam Int'l Airport v. Moylan*, 2005
11 Guam 5, the AG is required to approve any legal services contract between GIAA and private
12 counsel, according to section 5121(b) of Title 5 of the Guam Code Annotated. *See A.B. Won Pat*
13 *Guam Int'l Airport Auth.*, 2005 Guam 5. GIAA was aware of the need for approval as evidenced
14 by the first paragraph of the Thompson Letter which stated: "the services of that law firm have
15 been terminated, and it is my understanding that the professional services agreement between
16 that law firm and the GIAA was never approved by the Attorney General of Guam pursuant to
17 section 5121. For these reasons, GIAA no longer wishes to use the Brooks Firm as its counsel in
18 these civil actions." Only after the AG approves the legal services contract is there an official
19 "private counsel" for the GIAA and as the AG had not approved either the contract with the
20 Brooks firm, or the Mair firm at the date of the Thompson Letter then the GIAA had no
21 approved legal counsel. The fact that the GIAA may have been represented by the Brooks firm
22 or the Mair firm without AG approval on the date of the Thompson Letter is unimportant to the
23 determination of whether the GIAA request was made in good faith. A party seeking legal
24
25

1 advice, including the GIAA, is not prohibited from receiving or requesting the legal services of
2 more than one lawyer.

3 Therefore this court finds that the AG's duty of confidentiality extended to GIAA, as a
4 prospective client, who consulted the AG in good faith for the purpose of obtaining legal
5 representation or advice, even though the AG performed no legal services for the GIAA.

6 **b. Disclosure of Confidential Information**

7
8 Having found that the AG's duty of confidentiality extended to GIAA as a prospective
9 client who consulted the AG in good faith for the purpose of obtaining legal representation or
10 advice, we must now determine whether Guthrie in his capacity as Deputy Attorney General
11 disclosed confidential information.

12 The Committee argues that the Thompson Letter and attached Santos Report, included
13 confidential "information relating to the representation" of GIAA. The letter disclosed the
14 GIAA's concern about federal funding and its desire to award the contract to IBC based on the
15 Santos Report pursuant to section 5425(g)(i). The Committee contends that the GIAA would not
16 have disclosed this information about its civil actions to the AG if it were not for the solicitation
17 and expectation of the AG's legal representation. When the AG filed an action in the District
18 Court of Guam seeking to enjoin GIAA from hiring private counsel, it attached the Thompson
19 Letter along with Santos Report as an exhibit to the complaint and GIAA did not consent to the
20 AG's disclosure of this information.. The complaint was signed by Guthrie, as Deputy Attorney
21 General. By attaching the information onto the complaint, the Committee believes that Guthrie
22 disclosed confidential information. The Committee points out that the District Court granted the
23 GIAA's motion to redact and seal this information, finding that much of this letter and all of the
24 report were confidential.
25

1 On the other hand, Guthrie argues that this information was not confidential because it
2 did not include any mental impression or legal theories or litigation strategies.

3 In reviewing whether there was disclosure of confidential information in violation of the
4 Rule 1.6(a), it is important to understand the distinction between the duty of confidentiality and
5 the attorney-client privilege. The two terms are often used interchangeably and can sometimes
6 be confused, but “[t]he two are entirely separate concepts, applicable under different sets of
7 circumstances.” MODEL RULES OF PROF’L CONDUCT 1.6 at 5. Comment 3 of the ABA’s Rule
8 1.6 states:

9
10 “The attorney-client privilege . . . appl[ies] in judicial and other proceedings in
11 which a lawyer may be called as a witness or otherwise required to produce
12 evidence concerning a client. The rule of client-lawyer confidentiality applies in
13 situations other than those where evidence is sought from the lawyer through
14 compulsion of law. The confidentiality rule, for example, applies not only to
15 matters communicated in confidence by the client but also to all information
16 relating to the representation, whatever its source.”

17
18 MODEL RULES OF PROF’L CONDUCT 1.6 cmt. 3.

19 A lawyer’s duty of confidentiality to his client is significantly broader in scope than the
20 attorney-client privilege. Rule 1.6 confidentiality protects all information relating to the
21 representation of a client. “The range of protected information is extremely broad, covering
22 information received from the client or other sources, and even information not in itself
23 protected, but that may lead to the discovery of protected information by a third party.” MODEL
24 RULES OF PROF’L CONDUCT 1.6 cmt. 3. The purpose of Rule 1.6(a) is to encourage trust
25

1 between a lawyer and his client. The ABA's Rule 1.6 comment 2 states, "The protection of
2 confidential client information is a 'fundamental principle' in the lawyer-client relationship--it
3 contributes 'to the trust that is the hallmark' of the relationship, and encourages clients to
4 communicate freely with their lawyers so their lawyers can effectively represent them." MODEL
5 RULES OF PROF'L CONDUCT 1.6 cmt. 2.

6 Case law confirms that Rule 1.6 broadly covers any information relating to the
7 representation of a client. In *Lawyer Disciplinary Bd. v. McGraw*, 461 S.E.2d 850 (W. Va.
8 1995), the court stated, "The ethical duty of confidentiality protects more than just "confidences"
9 and "secrets" of a client in that Rule 1.6, entitled 'Confidentiality of Information,' prohibits
10 disclosures of 'information relating to representation of a client use of the word
11 'information' indicates that more than mere 'confidences' are covered.' *Lawyer Disciplinary Bd.*
12 *v. McGraw*, 461 S.E.2d at 861.

13 Rule 1.6 prohibits the AG from disclosing the information contained in the Thompson
14 Letter, specifically (i) GIAA's intent to award the bid to IBC based on the Santos Report, and (ii)
15 GIAA's desire to award the bid to IBC pursuant to section 5425(g)(i), because this information is
16 related to the AG's representation or prospective representation of the GIAA.

17 Guthrie also contends that the information is not protected because it was public, or
18 would soon be public information. However, the ABA instructs that disclosure of public or
19 readily available information is not a recognized exception, and again points out the significance
20 of the Rule 1.6(a)'s broad protection as compared to the attorney-client privilege. The Annotated
21 Model Rules of Professional Conduct, 5th Edition, June 2003 Rule 1.6 Confidentiality of
22 Information, states:
23
24
25

1 In contrast with the attorney-client privilege (applicable only to communications made
2 "in confidence," and waived if subsequently disclosed) and Model Rule 1.9(c)
3 (prohibiting lawyers from using information relating to the representation of a former
4 client to the disadvantage of that client and containing an exception for "information
5 [that] has become generally known"), Rule 1.6 contains no exception permitting
6 disclosure for information available from other sources. See, e.g., In re Anonymous, 654
7 N.E.2d 1128 (Ind. 1995) (lawyer violated Rule 1.6 by disclosing information relating to
8 representation of client, even though information "was readily available from public
9 sources and not confidential in nature"); Lawyer Disciplinary Bd. v. McGraw, 461 S.E.2d
10 850 (W. Va. 1995) ("[t]he ethical duty of confidentiality is not nullified by the fact that
11 the information is part of a public record or by the fact that someone else is privy to it");
12 Ariz. Ethics Op. 2000-11 (2000) ("the lawyer is required to maintain the confidentiality
13 of information relating to representation even if the information is a matter of public
14 record").

15
16 MODEL RULES OF PROF'L CONDUCT 1.6 at 8.

17
18 In *Lawyer Disciplinary Board*, the Attorney General of West Virginia was publicly
19 reprimanded for violation of Rule 1.6(a) when he disclosed his client's change of position on an
20 issue to a third party. He attempted to argue that the client would have been required to disclose
21 this information to the public anyway under the statutory Freedom of Information Act, and thus
22 it was not protected information. But the court was not persuaded, stating, "We disagree.
23 Clearly, respondent has confused the evidentiary attorney-client privilege with the ethical duty of
24 attorney-client confidentiality . . . he has violated Rule 1.6(a) of the Rules of Professional
25 Conduct. . . . The ethical duty of confidentiality is not nullified by the fact that the information is

1 part of a public record or by the fact that someone else is privy to it.” *Lawyer Disciplinary*
2 *Board*, 461 S.E.2d at 860.

3 Whether or not the GIAA’s intent to award the bid to IBC or its intent to continue the
4 construction plans under section 5425(g)(i) was generally known when Guthrie attached the
5 Thompson Letter to the complaint in CV03-008, said information was protected under Rule
6 1.6(a) because it is information related to the AG’s representation or prospective representation
7 of the GIAA. While information that is generally known may serve as an exception to the
8 attorney-client privilege, there is no “generally known” exception to an attorney’s duty of
9 confidentiality under Rule 1.6(a).

10 Guthrie next ventures the argument that disclosure of governmental business and private
11 confidences have different standards. He refers to a couple of citations which hint that there is
12 tension between confidentiality and the public’s right to know about governmental activity.
13 However, Guthrie commits the common mistake of confusing the narrower attorney-client
14 privilege with the broader Rule 1.6(a) protection. Case law instructs that the AG is not exempt
15 from his duties as an attorney, including duties imposed by Rule 1.6(a). The court in *Lawyer*
16 *Disciplinary Board* stated, “the Attorney General is thus required to conform his actions to the
17 Rules of Professional Conduct, as is every lawyer in this State. . . we see no conflict between
18 respondent’s duty as a servant of the public and his ethical duty of confidentiality under Rule
19 1.6(a) . . .” *Id.* at 863. The court continued to note that “the role of the Attorney General ‘is not
20 to make public policy in his own right on behalf of the state[,]’ but rather “to exercise his skill as
21 the state’s chief lawyer to zealously advocate and defend the policy position of the officer or
22 agency in the litigation[,]’ . . . there [is] a traditional attorney-client relationship between the
23 Attorney General and the state officer he represents. . . . Accordingly, “[t]he Attorney General
24
25

1 has the duty to conform his conduct to that prescribed by the rules of professional ethics.” *Id.* at
2 862. Thus, Guthrie, as a Deputy Attorney General, has the same duty of confidentiality as any
3 other lawyer.

4 We find that the Thompson Letter and Santos Report contained confidential information,
5 and by disclosing it, Guthrie violated his Rule 1.6(a) duty of confidentiality owed to GIAA, a
6 prospective client.

7 **2. Rule of Professional Conduct 1.8(b)**

8 “A lawyer shall not use information relating to representation of a client to the
9 disadvantage of the client unless the client consents after consultation.” GUAM RULES OF PROF’L
10 CONDUCT 1.8 (1994). Rule 1.8 serves to protect the client’s right to his lawyer’s duty of loyalty.
11 Comment 5 of ABA Model Rule 1.8 states: “Use of information relating to the representation to
12 the disadvantage of the client violates the lawyer’s duty of loyalty. Paragraph (b) applies when
13 the information is used to benefit either the lawyer or a third person [it] prohibits
14 disadvantageous use of client information unless the client gives informed consent.” MODEL
15 RULES OF PROF’L CONDUCT 1.8 cmt. 5. Also, it is irrelevant whether or not the information used
16 had become generally known. *See ABA Comm. on Ethics and Prof’l Responsibility*, Formal
17 Opinion 00-417 (2000)

18
19 The Committee argues that Guthrie used information relating to the representation of the
20 GIAA to the GIAA’s disadvantage. It argues that by attaching a copy of the Thompson Letter
21 and Santos Report as an exhibit to a complaint in which the AG’s office sued the GIAA, Guthrie
22 intentionally used these documents to substantiate the AG’s complaint against the GIAA. The
23 Committee contends that Guthrie’s use of the information relating to the two civil cases to bring
24 a new suit against the GIAA is adverse to the GIAA’s interests. The Committee further argues
25

1 that it was unnecessary to include this information with the complaint. Although Guthrie argued
2 that it was used to show that the GIAA was attempting to obtain private counsel, there was other
3 evidence which was sufficient to prove this, such as a newspaper advertisement where the GIAA
4 requested applications for private counsel.

5 Guthrie argues that the GIAA was not disadvantaged by the disclosure because the two
6 civil cases were dismissed within a few months and that there was no 'large adverse judgment.'

7 We agree that the Committee has not demonstrated how Guthrie's disclosure of the
8 information resulted in any disadvantage to the GIAA. The Committee fails to offer proof of
9 how Guthrie's disclosure of GIAA's intent to award the bid to IBC or its intent to continue the
10 construction plans under section 5425(g)(i) resulted in either an actual or potential disadvantage
11 to the GIAA. While the AG's disclosure may have been adverse to GIAA's interest in that the
12 GIAA desired to obtain private counsel and the AG used the letter to prohibit the GIAA from
13 obtaining private counsel, such disclosure did not disadvantage GIAA and did not put the GIAA
14 in any worse of a position had the disclosure not occurred. The GIAA merely had the
15 inconvenience of having to respond to the content of its letter in another suit. Inconvenience is
16 not synonymous with disadvantage in this case.
17

18 We find that Guthrie did not violate Rule 1.8(b) because the disclosure did not
19 disadvantage the GIAA.

20 **3. Appropriateness of Committee's Recommended Sanction**

21
22 In its Findings of Fact, Conclusions of Law and Private Reprimand, the Committee
23 administered to Guthrie a single private reprimand for his violation of Rules 1.6(a) and 1.8(b).
24 In addition, the Committee requests that should Guthrie be found violative of the Rules, the court
25

1 order an assessment against Guthrie for all expenses and costs incurred in the disciplinary
2 proceeding before the court.

3 According to Rule 3(b) of the Guam Rules for the Discipline of Attorneys, although the
4 court gives close consideration to the findings, conclusions and recommendations of the Ethics
5 Committee, it is free to substitute its own judgment for that of the Committee. The court may
6 also increase or decrease the discipline to be imposed. *See* GUAM RULES FOR THE DISCIPLINE OF
7 ATTORNEYS 3(b) (1999). Finally, the court has the authority to order an assessment be made
8 against Guthrie for all expenses and costs incurred in the disciplinary proceeding before the
9 court. *See* GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS 10 (1999).

10 The Committee proposes that its determination of sanction is consistent with its own
11 rules. According to the Rules of the Guam Bar Ethics Committee Governing Discipline
12 (“GBEC”), the purpose of the rules is to “maintain appropriate standards of professional conduct
13 in order to protect the public and the administration of justice from attorneys who have
14 demonstrated by their conduct that they are unable or are likely to be unable to properly
15 discharge their professional duties.” *See* RULES OF THE GUAM BAR ETHICS COMMITTEE
16 GOVERNING DISCIPLINE 1 (1999). Rule 9 of the Rules sets forth the factors to be considered
17 when proposing a disciplinary recommendation.³
18

19
20
21

³ (a) The discipline to be imposed or recommended by the Committee shall depend upon specific facts and
circumstances of a particular matter and shall be fashioned in light of the purpose of attorney discipline as set forth
in Rule 1 and may take into account aggravating or mitigating circumstances.

22 (b) In determining the nature and extent of the discipline to be imposed or recommended by it, the Committee
shall consider:

- 23 (i) The seriousness and circumstances of the offense;
24 (ii) The avoidance of repetition;
25 (iii) The deterrent effect upon others;

1
2 According to Standard 4.2 of the ABA Standards for Imposing Lawyer Sanctions, a
3 private reprimand⁴ is generally appropriate when a lawyer negligently reveals information
4 relating to representation of a client not otherwise lawfully permitted to be disclosed and this
5 disclosure causes little or no actual or potential injury to a client.

6 Guided by the above rules and principles, we find that a private reprimand of Guthrie is
7 an appropriate remedy where Guthrie violated Rule 1.6(a) by revealing information related to the
8 representation of the GIAA, a prospective client, without the GIAA's consent and where this
9 disclosure did not violate Rule 1.8(b).

10 C. CONCLUSION

11 Based on the foregoing, we hold that Guthrie violated Rule 1.6(a). We also hold that
12 Guthrie did not violate Rule 1.8(b). The discipline contained in the recommendation of the
13 Committee imposing a private reprimand on Guthrie is accepted.
14
15
16
17

18 (iv) The maintenance of respect for the honor and dignity of the legal profession; and

19 (v) The assurance that those who seek legal services will be insulated from unprofessional conduct.

20 (c) The respondent's lack of remorse, his failure to cooperate with the Committee in its investigation, his failure
21 to voluntarily make restitution to those injured by his misconduct, his failure to acknowledge and recognize the
22 seriousness of his violation, the extent of his breach of trust and his record of previous discipline are all factors
23 which shall be viewed as "aggravating." On the other hand, circumstances present in a case may cause the
Committee to be lenient, such as a willingness of the respondent to rectify the damage caused by the misconduct,
contrition, inexperience, temporary mental aberration for which the respondent has sought treatment, and restitution
prior to the filing of a complaint.

24 RULES OF THE GUAM BAR ETHICS COMMITTEE GOVERNING DISCIPLINE, 9 (1999).

25 ⁴ Admonition, also known as private reprimand, is a form of non-public discipline which declares the conduct of the
lawyer improper, but does not limit the lawyer's right to practice. *See ABA Standards for Imposing Lawyer
Sanctions, Standard 2.6* (1991).


D. ORDER

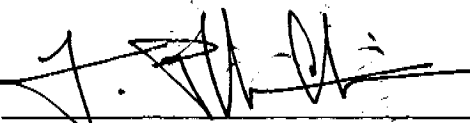
1
2 It is hereby ordered that Joseph A. Guthrie be privately reprimanded for violating Rule
3 1.6(a) of the Guam Rules of Professional Conduct.

4 It is hereby further ordered that Guthrie pay for all costs and expenses incurred in the
5 disciplinary proceeding before the Committee and this court. Hearing Counsel shall submit an
6 itemized breakdown of such costs and expenses within ten (10) days of the date of this order.
7 Respondent shall have five (5) days to file a response, if any. Each party shall bear their own
8 attorneys fees.

9
10 DATED this 14th day of October, 2005.

11
12
13 
14 ROBERT J. TORRES, JR.
15 Associate Justice

13 
14 FRANCES TYDINGCO-GATEWOOD
15 Associate Justice

16
17 
18 F. PHILIP CARBULLIDO
19 Chief Justice
20
21
22
23
24
25