

## ATTORNEYS GENERAL

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Because the Office of the Chuuk Attorney General is not a constitutional officer but rather is a principal officer of the executive and advisor to the governor and serves at his pleasure the Chuuk Attorney General cannot prosecute the governor. That would be the constitutional responsibility of the Independent Counsel. In re Legislative Subpoena, 7 FSM R. 259, 260 (Chk. S. Ct. Tr. 1995).

The governor does not have free rein to use the Attorney General's Office to litigate private matters outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM R. 259, 261 (Chk. S. Ct. Tr. 1995).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 92-93 (Pon. 1997).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Based on the traditional state jurisdiction over matters of domestic relations and on the applicable statutory provisions' language and history, a proceeding for enforcement of a foreign support order is properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and for the same reasons, these cases are properly prosecuted by the Pohnpei Attorney General's office, rather than by the FSM Attorney General's office. Villazon v. Mafnas, 11 FSM R. 309, 310-11 (Pon. 2003).

In domestic relations matters, the national court should abstain from exercising jurisdiction until the state court has had the opportunity to rule on the issues presented when it is a proceeding for enforcement of a foreign support order. These cases are properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and are properly prosecuted by a state attorney general, rather than by the FSM Attorney General. Anson v. Rutmag, 11 FSM R. 570, 571-72 (Pon. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The Pohnpei Port Authority has demonstrated irreparable injury by showing that the Governor's February 22, 2008 executive directive would require it to act inconsistently with the applicable state statutes because it purports to assert authority – that of obtaining legal counsel for PPA – that only PPA, acting by its general manager, may assert and it also potentially impairs the general counsel's contract with PPA by unilaterally terminating it and because, even though PPA may use the services of Pohnpei government attorneys to serve as PPA attorneys, this decision clearly lies with the PPA pursuant to its enabling statute and a decision to use the Pohnpei Attorney General's Office may not be imposed by an executive directive inconsistent with applicable state law. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

The FSM Attorney General cannot be required to obtain permission from (or even consult) a foreign government official because her office was once a member of an (advisory) board that no longer exists and which had no power to express an opinion on the subject even when it did exist. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A grant of the power to "sue and be sued" is the usual legal formulation by which a government agency is granted the power to independently hire its own attorneys instead of being represented by the attorney general. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

When the FSM public laws that created a government agency did not confer upon that agency the power to sue and be sued in its own name, that agency cannot be represented in court by any counsel other than the FSM Attorney General. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A government agency's power to sue and be sued in its own name does not mean that the attorney general cannot ever represent that agency or that the attorney general needs express prior authorizations to represent that agency. The attorney general may represent such an agency without any affirmative authorization to do so as long as that agency does not object to the representation. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A demand by opposing parties that they be provided with written authorization from both the two government agencies that permit the FSM Department of Justice to represent each of the agencies is meritless and must be rejected. Arthur v. Pohnpei, 16 FSM R. 581, 591 (Pon. 2009).

No sound basis is apparent for disqualifying the Chuuk Attorney General's Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office. The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

Even though the Chuuk Attorney General's Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General's Office from representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear that the Chuuk Attorney General's Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General's Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General's brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General's representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs' favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General's Office continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General's Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter's timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).