

**BEFORE THE
BOARD OF TRUSTEES OF THE
PUBLIC DEFENDER SERVICE CORPORATION
RELATIVE TO THE APPROVAL OF THE
PUBLIC DEFENDER SERVICE CORPORATION'S
STANDARD OPERATING PROCEDURES (SOP)
FOR CONFLICTS OF INTEREST**

RESOLUTION NO. PDSC 03-14

- WHEREAS,** Chapter 11, Title 12 Guam Code Annotated established the Public Defender Service Corporation; and
- WHEREAS,** §11104 of Chapter 11, Title 12 Guam Code Annotated defines the duties of the Corporation in Criminal Cases indicating that “the Corporation may assist the judges of the courts of Guam in ruling on cases of indigency and in establishing criteria for determining when the services of the Corporation are appropriate”; and
- WHEREAS,** §11106 of Chapter 11, Title 12 Guam Code Annotated grants the Corporation “the power to do any and all things necessary to further the purposes of this Chapter” ; and
- WHEREAS,** §11107 of Chapter 11, Title 12 Guam Code Annotated (Board of Trustees) states, “All powers vested the Corporation, except as otherwise provided in this Chapter, shall be exercised by the Board; and
- WHEREAS,** a written policy relative to a consistent methodology for determining **CONFLICTS OF INTEREST** in cases assigned to the Corporation by the courts of Guam is non-existent; and
- WHEREAS,** the Board of Trustees, recognizing the need for the development and implementation of such a policy, has instructed the PDSC Executive Director to create one which will be brought before the Board for its review and approval; and
- WHEREAS,** on January 14, 2014 Executive Director Eric D. Miller presented the attached PDSC Standard Operating Procedures (Attachment “A”) for Conflicts of Interest to the Board of Trustees; now therefore be it
- RESOLVED,** the Board of Trustees of the Public Defender Service Corporation, at its duly-noticed meeting of January 14, 2014, hereby approves the Corporation’s Standard Operating Procedures (Attachment “A”) for Conflicts of Interest, which is attached hereto and made a part of this resolution; and be it further
- RESOLVED,** these Standard Operating Procedures (Attachment “A”) for Conflicts of Interest shall take effect immediately.

ATTACHMENT "A"
(PDSC Board of Trustees Resolution No. 03-14)

STANDARD OPERATING PROCEDURE

DIVISION/SECTION: LEGAL SERVICES (Attorneys, Legal Secretaries, Legal Clerks)		
NUMBER: 001-FY2014	DATE OF ISSUE: January 14, 2014	EFFECTIVE DATE: January 14, 2014
SUBJECT: Conflicts of Interest (Withdrawals from Cases due to Conflicts)		

BACKGROUND:

The Public Defender Service Corporation (PDSC) is a *public corporation* of the Government of Guam (§11103, Chapter 11, Title 12 Guam Code Annotated). The primary functions of the agency include the provision of legal services, primarily in the representation of indigent defendants brought before the courts of Guam.

In some instances, the PDSC is required to withdraw as counsel of record when a conflict of interest exists. The Corporation seeks to establish a written policy which will provide guidelines as to when these withdrawals should occur.

AUTHORITY:

Chapter 11, Title 12 Guam Code Annotated established the Public Defender Service Corporation. In particular, §11104 defines the duties of the Corporation in Criminal Cases, and states that "the Corporation may assist the judges of the courts of Guam in ruling on cases of indigency and in establishing criteria for determining when the services of the Corporation are appropriate".

The Guam Rules of Professional Conduct (GRPC) provides guidelines for determining whether a conflict exists.

PURPOSE:

This Standard Operating Procedure shall provide a consistent methodology and/or guide in determining whether a conflict of interest exists, and therefore the PDSC must withdraw from a certain case.

APPLICABILITY:

This Standard Operating Procedure shall apply to all PDSC employees, especially the Legal Clerical Services division, the Legal Secretarial Services Division and the Attorneys division. These personnel are directly involved in the processing of cases received by the Corporation. (Please see "Procedures" below.)

POLICY:

The Public Defender Service Corporation shall not accept clients where the acceptance of the client would create a conflict of interest with respect to a current or former client, or an employee of the PDSC. In determining whether a conflict exists, the PDSC will be guided by the Guam Rules of Professional Conduct (GRPC). The following is a guide to making those decisions in specific situations:

➤ Witness is a Former Client:

1. PDSC shall not reveal information relating to the former representation except as allowed by the GROC. [GRPC 1.9 (c) (2)]
2. PDSC shall not represent a client where current representation is with respect to the same or substantially related matter, and the current and former clients have interests adverse to each other. [GRPC 1.9 (a)]

Example: PDSC represents the victim in a Domestic Violence case, and has obtained an Order of Protection. Subsequently, the PDSC is appointed to represent the abuser in a new assault case against the former client.

PDSC would move to withdraw from representing the abuser in the assault case, because current representation is with respect to the same or substantially related matter, and the current and former clients have interests adverse to each other.

➤ Witness is a Current Client: This is a CONFLICT [GRPC 1.7 (a) (1)] UNLESS:

1. Representation of the witness is unrelated to a current case; and
2. Continued representation of both parties will not negatively impact the representation of either client; and
3. Both clients sign a Waiver of Conflict. [GRPC 1.7 (b)]

Example: PDSC represents a child in a Juvenile case. PDSC is subsequently appointed to represent the child's father in a Family Violence case where the

juvenile client is a victim. Although the two cases are unrelated, continuing representation of both would negatively impact the representation of the two clients. Continued representation of the father would mean challenging the veracity of our juvenile client, and would harm the attorney-client relationship in the Juvenile case.

Example: PDSC represents a client on a DWI charge. Subsequently, we are appointed to represent a defendant charged with drug possession where the DWI client is a passenger in the car at the time the defendant was arrested for possession of drugs in the same car. The drug case is unrelated to the DWI case. Continued representation of both would probably not negatively impact representation of either client, but we would require BOTH clients to sign a Waiver of Conflict before we continued with both cases.

➤ **Victim is a Current Client:** This is a CONFLICT. [GRPC 1.7 (a) (1)]

➤ **Where two (2) cases come in at about the same time:**

Where two (2) cases come in at about the same time but there is determined to be a conflict, the PDSC will continue with the case which came in FIRST, and move to withdraw from the case which came in SECOND in time, unless we can avoid a conflict by taking the SECOND in time (because we represented the SECOND in time in other cases).

➤ **Where a PDSC employee, or a member of his/her immediate family is the victim or a witness:**

This is a CONFLICT. [GRPC 1.7 (a) (2)]

➤ **Where a PDSC employee has a connection to the victim or witness:**

Representation will be declined by the staff attorney where there is a significant risk that the representation of the client will be materially limited by the personal interests of the staff attorney. PDSC will assign the case to another staff attorney without a disqualifying conflict. The client and the Court will be advised of the staff attorney's disqualifying personal interest. [GRPC 1.7 (a) (2)]

Disclosure: Where the PDSC has a potential conflict, but determines that withdrawal is not required, the PDSC shall nevertheless advise the Court and the parties involved of the potential conflict.

PROCEDURES:

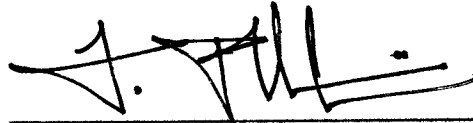
1. The Legal Clerical Services division (Front Office) receives charging documents indicating the PDSC has been appointed by the Court to represent a defendant in a case.
2. The assigned Legal Clerk checks for conflicts involving parties and witnesses in Abacus (case management software), and notes any potential conflicts in writing on the Note Sheet provided in each case file.
3. The case file is then transmitted to the assigned attorney.
4. The assigned attorney reviews the case file for potential conflicts. If the attorney determines there is a conflict, he/she shall request written permission to withdraw from the CONFLICT COORDINATOR (Executive Director or his designee).
5. When Police Reports are received, the assigned attorney reviews them and identifies all relevant names mentioned in this document which need to be checked for conflicts in Abacus (case management software).
6. The assigned attorney's Legal Secretary processes identified names in Abacus, and reports his/her findings back to the assigned attorney.
7. The assigned attorney reviews potential conflicts and determines whether one exists.
8. If the assigned attorney determines there is a conflict, he/she shall seek written permission from the CONFLICT COORDINATOR (Executive Director or his designee), to withdraw from the case.



Attorney ERIC D. MILLER
Executive Director

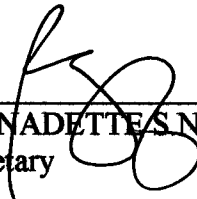
Date: 1/14/14

DULY AND REGULARLY ADOPTED this 14th day of January, 2014.



Chief Justice F. PHILIP CARBULLIDO

ATTEST:



BERNADETTE S.N. CHARGUALAF
Secretary