

**BEFORE THE  
PUBLIC DEFENDER SERVICE CORPORATION  
BOARD OF TRUSTEES  
RESOLUTION NO. 06-04  
RELATIVE TO THE APPROVAL OF  
Standard Operating Procedure No. 002-FY2004  
(General Administration)  
ADDRESSING CONFLICTS, CASE-SCREENING  
AND CASE-ASSIGNMENT IN ADULT CRIMINAL CASES  
(PDSC EMPLOYMENT OF FORMER PROSECUTOR)**

**WHEREAS,** On February 23, 2004, Attorney Tricia R. S. Ada began her employment with the Public Defender Service Corporation; and

**WHEREAS,** Prior to her employment with the Public Defender Service Corporation, Ms. Ada was the former Chief Prosecutor at the Office of the Attorney General, Department of Law; and

**WHEREAS,** Statutory requirements, Professional Standards and Codes of Professional Responsibility governing the subject of potential conflicts of interest, and/or appearances of professional impropriety exist and must be adhered to; and

**WHEREAS,** The Public Defender Service Corporation recognizes its responsibility and obligation to the clientele it serves with respect to the statutes, standards and codes mentioned above; now therefore be it

**RESOLVED,** The Board of Trustees, at its meeting of February 24, 2004, reviewed, discussed and approves PDSC Standard Operating Procedure Number 002-FY2004 as a sufficient method of addressing this issue; and be it further

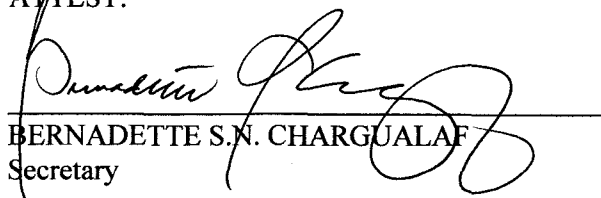
**RESOLVED,** Standard Operating Procedure Number 002-FY2004 is attached hereto and made a part of this resolution.

**DULY AND REGULARLY ADOPTED** this 24<sup>th</sup> day of February, 2004.



\_\_\_\_\_  
Chief Justice F. PHILIP CARBULLIDO  
Chairman

ATTEST:



\_\_\_\_\_  
BERNADETTE S.N. CHARGUALAF  
Secretary



# PUBLIC DEFENDER SERVICE CORPORATION

(Kotperasion Setbision Defensot Pubbleku)

GOVERNMENT OF GUAM

110 West O'Brien Drive ♦ Hagåtña, Guam 96910-5174 ♦ Tel: (671) 475-3100 ♦ Fax: (671) 477-5844

## STANDARD OPERATING PROCEDURE

<b>DIVISION/SECTION:</b> GENERAL ADMINISTRATION		
<b>NUMBER:</b> 002-FY2004	<b>DATE OF ISSUE:</b> February 16, 2004	<b>EFFECTIVE DATE:</b> February 16, 2004
<b>SUBJECT: CONFLICTS, CASE-SCREENING AND CASE-ASSIGNMENT IN ADULT CRIMINAL CASES (PDSC EMPLOYMENT OF FORMER PROSECUTOR)</b>		

### BACKGROUND:

In October 2003, the Public Defender Service Corporation (PDSC) established Standard Operating Procedure Number 001-FY2004, setting forth the process of determining when the PDSC can, and should withdraw from court cases due to actual or potential conflicts of interest which ethically bar the Corporation from providing legal services in these matters. **Additional situations in this regard were created with the hiring of former Chief Prosecutor Tricia Ada as an Assistant Public Defender, which will become effective on February 23, 2004. In her position as Chief Prosecutor at the Office of the Attorney General, Ms. Ada had day-to-day involvement or supervision of the prosecution of misdemeanors and felonies in the General Crimes Division from 1998 to 2003. Furthermore, Ms. Ada was the supervising attorney for the Juvenile Division, although she was not involved in the daily operations, or charging decisions of that section. She did not handle juvenile cases of any kind nor did she appear in court on juvenile matters.**

**This issue is not new to the PDSC. In the past, attorneys have been hired to work at the Corporation after previous employment in the Attorney General's Prosecution Division. These attorneys include Director Kathleen E. Maher, Richard S. Dirks, and Jane L. Kennedy who remain employed with the Public Defender. Jocelyn Roden, who is employed with the Attorney General's General Crimes Division, has gone back and forth between Public Defender and Attorney General employment as has Kathleen Maher. PDSC staff and attorneys are cognizant of and able to abide by and seriously consider any screening and coverage concerns in relation to Ms. Ada's prior employment as Chief Prosecutor.**

## **AUTHORITY:**

**Chapter 11 of Title 12 Guam Code Annotated** established the Public Defender Service Corporation. Section 11106 of Chapter 11 granted the Corporation power to do any and all things necessary to further the purposes of Chapter 11. Section 11107(a) authorized the Board of Trustees to exercise all powers vested in the Corporation.

### **Title 7 of Guam Code Annotated, Civil Procedure, Rules of Professional Conduct:**

**Rule 1.11 Successive Government and Private Employment (a)** Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such matter unless:

1. The disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

2. Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with provisions of this rule.

Although this rule applies to private clients, defense of specific individuals in criminal case is identical except for the issue of a fee with the Public Defender as no fee exists.

### **American Bar Association Standards for Criminal Justice-THE DEFENSE FUNCTION**

#### **Standard 4-1.2 The Function of Defense Counsel**

#### **Standard 4-3.5 Conflicts of Interest**

(h) Defense counsel who formerly participated personally and substantially in the prosecution of a defendant should not thereafter represent any person in the same or a substantially related matter. Defense counsel who was formerly a prosecutor should not use confidential information about a person acquired when defense counsel was a prosecutor in the representation of a client whose interests are adverse to that person in a matter.

### **American Bar Association Model Code of Professional Responsibility**

Canon 9 A Lawyer should avoid even the Appearance of Professional Impropriety

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

## **PURPOSE:**

This Standard Operating Procedure shall serve to provide a concise definition of cases and circumstances where a former Assistant Attorney General, and particularly former Chief Prosecutor Tricia Ada, will be screened from certain Criminal cases charged or reviewed by her prior to her departure from the Office of the Attorney General and her date of employment with the PDSC as an Assistant Public Defender.

## **APPLICABILITY:**

This Standard Operating Procedure shall be adhered to by all employees of the Public Defender Service Corporation. It will apply to the clientele we serve, which may include walk-in clients, referrals from other agencies and/or court-appointments.

## **POLICY:**

With regards to determining "Conflicts of Interests" in cases coming before the Public Defender Service Corporation when assigning to, discussing with, or requesting coverage on a case from Ms. Ada, the following shall apply:

- **DEFINITE CONFLICT:** Any Criminal Adult (misdemeanor or felony) case that was charged out by Tricia Ada, or upon which she actively worked on, or appeared in court for, other than a routine hearing such as an arraignment or trial setting.
- **POSSIBLE CONFLICT:** Any adult criminal case case charged prior to Tricia Ada's employment at the PDSC as an Assistant Public Defender.

Case numbers and police reports that should not be assigned to Tricia Ada are as follows:  
CM1839-98 Police Report 98-15709 through CM89-04 Police Report 04-02385 and CF856-98 Police Report 98-23885 through CF52-04 Police Report 04-03096.

- **LIKELY CONFLICT:** Any adult criminal case (misdemeanor or felony) charged between November 1998 and February 13, 2004.

**Any adult criminal case which may have existed in the Attorney General's Prosecution/General Crimes division during the period from November 1998 to February 2004 shall not be assigned to Tricia Ada without pre-screening and approval from the Director.**

**NOTE:** The above circumstances are not meant to be construed as all-inclusive. Other situations may present the question of whether or not it will be a "conflict of interest" for Tricia Ada to represent the individual or discuss his case with him/her. Ultimately, these matters must be referred to an attorney for review. His/her decision must be noted in the case file, and reported to the Director.

Furthermore, no member of the PDSC Support Staff is authorized to make any determination as to whether or not a conflict exists for Ms. Ada. Determinations of this nature must be made by an attorney and/or the Director.

## **PROCEDURES:**

1. In addition to the standard procedures for handling PDSC conflicts, all new criminal adult cases filed with numbers determined to be a conflict for Tricia Ada after the date of her employment at the PDSC shall be flagged with a red circle on the front with the notation "not to be covered or reviewed

by Tricia Ada". Tricia Ada shall not be asked to review, or cover in court any adult criminal case by support staff that was filed prior to her employment as an attorney with PDSC. No attorney shall discuss any criminal adult case nor ask her to review any documents in relation to any case charged during the time of Tricia Ada's employment with the Attorney General Prosecution/General Crimes Division. Tricia Ada shall notify the Director, notify her assigned secretary, and see that notice is circulated to all staff regarding any other conflicts cases that may come to her knowledge. She should not handle any of these cases due to her previous employment with the office of the Attorney General in any capacity. Some cases might include non-criminal cases.

2. When a legal secretary receives a new case file from the front office, immediate attention must be paid to the Note Sheet which reflects all cases involving parties in the new case. These must be called to the attention of the assigned attorney, so that a review for potential conflicts in relation to Ms. Ada's prior prosecution can be addressed, and Ms. Ada screened from the case if necessary.
3. All legal secretaries must ensure that new cases which cannot be assigned to Tricia Ada with reasons, are entered into ABACUS and made a part of each respective case file.

DIRECTOR  
Kathleen E. Maher



ADMINISTRATIVE DIRECTOR  
Bernadette S.N. Chargualaf

**PUBLIC DEFENDER SERVICE CORPORATION**  
**(Kotperasion Setbision Defensot Pupbleku)**

GOVERNMENT OF GUAM  
110 West O'Brien Drive  
Hagåtña, Guam 96910-5174  
Tel: (671) 475-3100 ♦ Fax: (671) 477-5844

**STAFF ATTORNEYS**

Richard S. Dirix  
Jane L. Kennedy  
Terrance A. Long  
Loretta T. Gutierrez-Long  
Pablo M. Aglubat  
Raymond B. Ilagan  
Stephen P. Hattori  
Thomas M. Parker  
Tricia R.S. Ada

February 26, 2004

Douglas B. Moylan  
Attorney General  
Office of the Attorney General  
Suite 2-200E, Guam Judicial Center  
120 West O'Brien Drive  
Hagatna, Guam 96910

Re: Compliance with Guam Rules of Professional Conduct Rule 1.11(b)(2)  
See attached Standard Operating Procedure regarding Tricia Ada

Dear General Moylan:

Tricia Ada recently became an employee of the Public Defender Service Corporation (PDSC). As she was previously employed by the Office of the Attorney General as Chief Prosecutor, PDSC has implemented Standard Operating Procedures for insuring that adult criminal cases, that existed in the Office of the Attorney General at the time of her employ in the General Crimes/Prosecution Division, are appropriately screened from assignment to Ms. Ada.

This letter is to comply with the requirement that prompt notice that screening procedures are in place be given by Ms. Ada's current employer such that the appropriate government agency, the Office of the Attorney General, can determine that PDSC is aware of its obligations and has implemented appropriate measures.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Maher".

KATHLEEN E. MAHER

cc: Chief Justice F. Philip Carbullido