

Transcript Part 2: Case No. 1DSC-21-0000748
December 8, 2021 Hearing

re: Motion to Disqualify the Department of the Attorney General from
Representing Defendant Asuncion in the Matter of Defamation

JUDGE RULES ON MOTION TO DISQUALIFY DEPARTMENT OF ATTORNEY GENERAL.

Start Time	Judge: Bautista	Plaintiff: Vanessa Ott
14:21:25	Based on the court's review of the Motion and the Supplemental Memorandum filed by Ms. Ott, in addition the court's review of the Memorandum in Opposition filed by the Attorney General's Office, at this time, the court makes the following findings in connection with the motion	
14:21:45	Number 1, the court does find that under HRS 662-16, the Attorney General's Office does have discretion to represent State employees in civil actions. The court also finds, based on the representations in the filings, that the Defendant in this case is a teacher employed by the Hawaii Department of Education, and therefore is a State employee. Again, based on the representations in the filings, the court finds that at the time of the incident that resulted in this claim, the Defendant was acting within her scope of employment by the State of Hawaii. And therefore base on those statutes, the Attorney General is <i>permitted</i> , by discretion to represent the defendant in this matter, again, not in a personal capacity, in her capacity as an employee of the State of Hawaii through the Department of Education.	
14:22:52	Now, what I can say to you, Ms. Ott, so given my findings, I am <i>bound</i> to deny your motion to disqualify the Attorney General at this time.	
14:23:02	Now, that doesn't end your case. Okay? That dissolves and disposes of your motion. Okay? You still have the right to present your case, and in fact, the next step will be to now move your case forward towards the trial. Okay?	
14:23:19	Now, I know you're going to have questions. I'm going to stop you in advance and tell you, I'm not allowed to give legal advice. I would highly recommend that after the fact, not in a public forum in front of everybody now, but I'd highly recommend, you contact Mr. Phillips, after the fact, as a member of the Hawaii Bar and an attorney, and he should be able to answer your legal questions.	
14:23:26	My decision is based on the findings I just made, and it is well-grounded in the current law. Okay? And so, at this point, the next step is going to be to set the case for trial if there is no possible settlement. ...	
14:29:17	Okay, Ms. Ott, any final questions?	
14:29:21		Yes. I'm sorry your honor, but could you explain to me, in statute 662-15, the one that says it does not apply to defamation, assault. What does that mean that this Chapter "does

Start Time	Judge: Bautista	Plaintiff: Vanessa Ott
		not apply" in cases of defamation?
14:29:41	That's exactly the kind of question, Ms. Ott, that you are entitled to an answer on, but that's exactly what I said, what I meant earlier, I can't answer those questions. I'm not allowed to. Okay? So, I just want you to know, it's not that I don't want to help you, or personal, it's just	
14:29:56		I understand, but you ruled on this, right?
14:30:00	Yes. Ms. Ott. Ms. Ott, you have an attorney, Mr. Phillips who's offered (<i>unintelligible</i>)...[<i>interrupted</i>]	So, I'm just wondering, [<i>interrupted</i>]
14:30:07		No, I'm sorry, he's <i>not</i> my attorney! I'm sorry your honor. I'm sorry that I even asked Mr. Phillips to be here because he's not my attorney. He's only my friend.
14:30:18	Ms. Ott. I know that Ms. Ott. Ms. Ott, [<i>interrupted</i>]	I did not hire an attorney. I'm just trying to [<i>interrupted</i>]
14:30:21	Wait for a minute. Just relax. Take a breath. Listen. I know he's not your formal attorney. I established that at the beginning of your motion. Okay.	
14:30:30	What I'm saying is, I'm not going to, I've got to tend to all these other case, and I've got a trial set <i>now</i> , at 2:30, that's already waiting.	
14:30:40	Not only do I not have the time, I'm not allowed to give you legal answers to these questions.	
14:30:47	All I was about to suggest to you is, if Mr. Lunsford is there for you as a friend, which is what he represented, then you should be asking <i>him</i> , offline separately	
14:31:00		Okay. I'm sorry, your honor, but I <i>did</i> ask him, and <i>he</i> thought I had a very good legal argument here. So, so, he just thought that, and I'm <i>just</i> trying to to find out why you ruled that <i>that</i> doesn't apply? What does it <i>mean</i> "doesn't apply," that the Chapter doesn't apply.
14:31:17		You made a ruling on this, and I'm just asking about your ruling,
14:31:21	My ruling, [<i>interrupted</i>]	I'm <i>not</i> asking for legal advice.
14:31:22	Ms. Ott, my ruling was not, nothing to do with whether or not the Defamation chapter applied or not. That was part of the arguments put forth. Alright? What my ruling was is, I cited and <i>ruled</i> that the Attorney General's Office is, by statute, is allowed at its discretion, to represent state employees <i>in these matters</i> . Okay? And <i>then</i> , I then confirmed that the Defendant, based on the representations, <i>is</i> a state employee, and the claims against	

Start Time	Judge: Bautista	Plaintiff: Vanessa Ott
	her were made during the course of her <i>performance</i> as a state employee. That's all I ruled on.	
14:32:04	And, now wait. And based on <i>that</i> I'm not going to sit here and debate <i>your</i> other reading of the other statutes. That's not my job, and I cannot do that. I've made the ruling	
14:32:13	I've made the ruling, <i>[interrupted]</i>	I don't want to debate. I just want to know <i>your</i> reading of the statute. What does it mean, "it doesn't apply"?
14:32:19	Okay. I didn't make that statement. That came from Mr. Azuma's memorandum in opposition, <i>[interrupted]</i>	
14:32:25		I'm sorry, but that's part of the <i>statute</i> . That's part of the statute of 662-15. It says, "these offenses, <i>[interrupted]</i>
14:32:33	I know.	It says it's an " <i>Exception</i> ." It even says its part of the Exceptions to the Chapter.
14:32:38	Ms. Ott. Ms. Ott. Listen to me. No. Okay. Listen	<i>[interrupted] (unintelligible)</i>
14:32:45	You're reading the statutes <i>wrong</i> . Okay, I was trying to be polite and friendly, like I try to always be. Now I'm going to tell you because you're pressing me, and I've got to move on. You're reading the statutes wrong. You need to either, <i>offline</i> , follow up with Mr. Phillips or go contact <i>another</i> attorney in this area of law that can advise you. Okay? I <i>cannot</i> . That's all I'm saying so I've made my ruling on your motion.	
14:33:11	Your case is still going forward. Didn't affect the disposition of your underlying claim. We just set you for mediation. Just gave you a new date on that first status. If mediation is not successful, you will still have your day in court for trial. All I did was rule on the motion to disqualify. Okay? I reviewed everything. I don't have the time to go through every single citation that you made in your motion, okay, and point out to you why it's not applicable to this case. Alright? That's all I'm saying. So, you need to really seek outside legal advice to get those answers. Okay? That's the best I can do.	