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IN THE SMALL CLAIMS DIVISION OF THE
DISTRICT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

VANESSA OTT,

Plaintiff,

vs.

CHRISTINE K. ASUNCION,

Defendant.

CIVIL NO. 1DSC-21-0000748

DEFENDANT CHRISTINE K.
ASUNCION'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO DISQUALIFY THE
STATE OF HAWAII DEPARTMENT
OF THE ATTORNEY GENERAL
FROM REPRESENTING
DEFENDANT; DECLARATION OF
MICHAEL R.S. AZUMA;
CERTIFICATE OF SERVICE

HEARING

Date: December 8, 2021

Time: 1:30 p.m.

The Honorable Michelle N. Comeau

**DEFENDANT CHRISTINE K. ASUNCION’S MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION TO DISQUALIFY THE STATE OF HAWAII DEPARTMENT
OF THE ATTORNEY GENERAL FROM REPRESENTING DEFENDANT**

On November 10, 2021, Plaintiff Vanessa Ott filed her *Motion to Disqualify the State of Hawaii Department of the Attorney General from Representing Defendant* (“Motion”), to deprive Defendant Christine Asuncion, an employee of the State of Hawaii, of the legal representation that she is entitled to from the Department of the Attorney General. The Motion contains citations to Hawaii Revised Statutes (“HRS”) § 662-7 and § 662-15 but does not adduce any argument to why those statutes are relevant. The sole argument made in the Motion incorrectly assumes that Defendant must “qualify for *pro bono* service.” For the foregoing reasons, the Motion should be denied with prejudice.

I. ARGUMENT

While the absence of legal argument by Plaintiff should be sufficient to deny the Motion, the Defendant makes the following arguments for the sake of completeness: (1) HRS § 28-1 and § 662-16 specifically allows the Hawaii Department of the Attorney General to defend Christine Asuncion in the instant civil action; (2) HRS § 662-15 is not applicable; and (3) representation by the Hawaii Department of the Attorney General is not classified as *pro bono* and is not based on whether or not a defendant is indigent.

A. HRS § 28-1 and § 662-16 Allows the Attorney General to Represent Defendant

HRS § 28-1 reads: “The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases.” HRS § 28-1. The instant claim has been brought in the Small Claims division of the District Court of the First Circuit of the State of Hawaii, against an employee of the Hawaii Department of Education.

Pursuant to HRS § 662-16, the Attorney General has discretion to represent State employees in civil actions. “The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury, including death, resulting from the act or omission of any state employee while acting within the scope of the employee's employment.” HRS § 662-16(a). Defendant is a teacher employed by the Hawaii Department of Education (“DOE”) and was acting within the scope of her employment during the allegations contained in Plaintiff’s Complaint. Additionally, Plaintiff does not dispute in her complaint that Defendant is an employee of the DOE, nor does she dispute that the alleged defamation occurred while Defendant was acting within the scope of her employment. Thus, there are no grounds for the Court to disqualify the Attorney General’s representation of Defendant in the instant case.

B. HRS § 662-15 is Not Applicable

Plaintiff cites to HRS §§ 662-2 and 662-15 in her Motion but does not adduce any argument as to why they are relevant to the issue of disqualification. See Mot. at 1. Chapter 662 is the State Tort Liability Act, which allows the State to “waive its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances . . .” HRS § 662-2. In addition, HRS § 662-15 reads: “This chapter shall not apply to: (4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;” HRS § 662-15(4). None of these provisions apply whatsoever to whether the Department of the Attorney General can or should be disqualified. Therefore, waiver of immunity by the State of Hawaii is not relevant and only HRS § 662-16 controls.

C. Representation by the Attorney General is Not *pro bono* and is Not Predicated on Whether or Not a Client is Indigent

Plaintiff argues that this department cannot represent Defendant because she does not qualify for *pro bono* service as “Ms. Asuncion is [sic] does not fit the description of a person with ‘limited or no funds.’” See Mot. at 2.

However, this argument is misguided, supported only by assumptions and definitions from the Hawaii Bar Association web page and an on-line law dictionary.

Representation of Defendant in the instant case falls directly under the Attorney General’s official “duty to attend.”¹ While no fee or reward can be received by the Attorney General, services rendered are not considered a *pro bono* service as Plaintiff contends. Rather, and as stated above, the department is statutorily authorized to represent employees of the state in civil actions, and Plaintiff has not cited any law to disqualify the department.

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¹ Under HRS § 28-6, the Attorney General shall not receive any fee or reward for any official duty:

The attorney general shall not receive any fee or reward from or in behalf of any person or prosecutor, for services rendered in any prosecution or business to which it shall be the attorney general’s official duty to attend; nor be concerned as counsel or attorney for either party in any civil action depending upon the same state of facts.

HRS § 28-6.

II. CONCLUSION

Based on the foregoing reasons, Defendant CHRISTINE ASUNCION respectfully requests that the Court deny the Motion with prejudice.

DATED: Honolulu, Hawaii, November 22, 2021.

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