

March 26, 2020

**Honorable Tina Muna-Barnes
Speaker, 35th Guam Legislature**

RE: FORMAL ETHICS COMPLAINT

Speaker Muna-Barnes;

I am requesting a status update on the Formal Ethics Complaint I filed with your Office against Senators Regine Biscoe-Lee and Kelly Marsh (Taitano). At a time that public faith and confidence in our elected and appointed officials is at its lowest point since the 2014 “Super Secret Massive Retroactive Pay Raises;” I am concerned that the Legislature is going to use the COVID-19 Pandemic as a way to provide “political cover” for Senators Lee and Marsh.

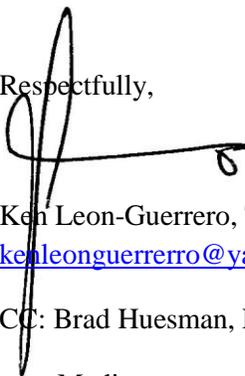
In view of the additional concerns raised by former Senator Robert Klitzke, I believe that it is paramount that your office move expeditiously and address all the complaints before the Ethics Commission.

It is more important than ever before that your Office acts as the People’s Champion the role was intended to be; especially in view of the Governor’s illegal attempt to suspend the “open Government Law.” Adherence to a Code of Ethics by elected members of the legislature who claim to represent the people of Guam is more important than ever before. But your personal silence on this matter on reinforces the concerns and many others have about our politicians and appointees.

I am still waiting for a response outlining the course of actions your office and the committee will be taking in view of the sudden availability of time to execute non-public hearing processes.

Continued inaction by your office and the Ethic Committee only diminishes what little trust still exists by the people.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ken Leon-Guerrero', with a long horizontal stroke extending to the right.

Ken Leon-Guerrero, Taxpayer
kenleonguerrero@yahoo.com

CC: Brad Huesman, Fischer Huesman PC

Media

----- Forwarded Message -----

From: Robert Klitzkie <klitzkie@hotmail.com>

To: Ken Leon-Guerrero <kenleonguerrero@yahoo.com>

Sent: Tuesday, March 17, 2020, 5:10:47 PM GMT+10

Subject: Senator Lee's violation of the Sunshine Law

Ken,

After you filed an ethics complaint with the 35th GL concerning Senator Lee's trip to the UN. A Daily News story quoted Lee's rationale for the trip as that she is "...duty bound to address decolonization '... on the local, regional, and world stages.'" In response to my Sunshine Law demand for public records showing that she was "...duty bound to address decolonization '... on the local, regional, and world stages.'" Senator Lee directed me to 1 GCA Ch. 21 and Rule X, Section 10.02(k)(1)(E)(i) of the Standing Rules of the 35th GL and United Nations Charter, Chapter IX, Article 73. Senator Lee also cited a "firm belief."

I have enclosed a copy of the Notice of Violation of the Sunshine Law as none of the citations proffered by Senator Lee substantiate her claim of being "duty bound" as the rationale for her trip to New York but consisted of political puffery at best. The oath that Senator Lee took when sworn into the 35th GL would have required her to comply with PL 35-36 Ch XIII Part I § 1. (i), the provision of law the violation of which is the gravamen of your ethics complaint.

I forward my response to Senator Lee for such use as you would make of it.

Bob

From: Robert Klitzkie

Sent: Friday, March 13, 2020 10:51 AM

To: <mailto:senatorbiscoelee@guamlegislature.org>

Subject: Notice of violation of Sunshine Law

Senator Lee:

You are in violation of the Sunshine Law.

A complaint to the Ethics Committee of the 35th GL prompted my Sunshine Law demand. The gravamen of the ethics complaint is that you used public funds for an unauthorized purpose, viz. a publicly funded trip to the UN in New York in violation of law, specifically PL 35-36 Ch XIII Part I § 1. (i) which reads in pertinent part:

PL 35-36 Ch XIII Part I § 1. (i) travel to attend conferences and official meetings with national and regional government officials or national and regional organizations of which the entity is an official member...

The ethics complaint alleges that because Guam is not a member of the United Nations your travel was improper. The PDN story of March 3 covering the filing of the ethics complaint quoting you was the factual basis of my Sunshine Law demand for documents showing “that you are duty bound to address decolonization ‘... on the local, regional, and world stages.’”

The demand sought all public records showing the source of your duty.

You cited three documents which you allege describe your “duty.” You also cited to your “firm belief:”

“Beyond any public law or legislative rule that would set forth “duties” for Guam’s leaders to address decolonization locally, regionally, or globally is my firm belief that all elected public servants have a moral obligation to do whatever we can to advance Guam’s decolonization.”

In addition to your “firm belief” you cited 1 GCA § 2101 et seq. A search of that statutory scheme shows that it is bereft of the word “duty.” Only 1 GCA 2104 ¶ 3 implicitly imposes a duty on a member of the Commission on Decolonization for the Implementation and Exercise of Guam Self-Determination for the Native Inhabitants of Guam, to wit:

1 GCA 2104 ¶ 3. Without being excused pursuant to a motion passed by the Commission, any appointed member of the Commission who fails to attend three (3) consecutive regularly scheduled meetings shall automatically be disqualified to continue serving in his or her position and the appointing authority shall then be required to appoint a replacement for said member.

In addition to that statute you referenced the Standing Rules of the 35th GL:

Rule X, Section 10.02(k)(1)(E)(i) all matters relating to self-determination, political status, the United Nations, and decolonization; (ii) the Commission on Decolonization, and such authorities as are granted under statute, resolution, or executive order to the former Committees on Federal and Foreign Affairs for which this Committee is successor; (iii) all matters relating to Indigenous rights, including fishing and cultural (iii) all matters relating to Indigenous rights, including fishing and cultural practices; and...

The referenced rule sets out the areas of the Committee’s interests (NB the words, “all matters relating to”) but does not assign any duty to a member of the committee, nor could it—

§1423. Legislature of Guam

(a) Unicameral nature; power

The legislative power and authority of Guam shall be vested in a legislature, consisting of a single house, to be designated the "Legislature of Guam", herein referred to as the legislature.

The duty which you assert would reside, if anywhere in GovGuam, in the executive branch, *cf.*:

§1422. Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam"...

The third document you cite doesn't assign a duty to you either:

Local public servants pressing for decolonization are also acting to hold the United States to its own duty to grant our island territory full self-governance. As it agreed to in the United Nations Charter, Chapter IX, Article 73:

"...holding the United States to its own duty..." while not a "duty," is a prerogative of member nations of the United Nations, not the duty of a senator in the Guam Legislature.

Senators' prerogatives and duties are described in the Organic Act, 48 USC Ch. 8A at Subchapter III, viz.:

§1423a

The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam.

48 USC §1423d. Oath of office

Every member of the legislature and all officers of the government of Guam shall take the following oath or affirmation:

"I solemnly swear (or affirm) in the presence of Almighty God that I will well and faithfully support the Constitution of the United States, the laws of the United States applicable to Guam and the laws of Guam, and that I will conscientiously

and impartially discharge my duties as a member of the Guam Legislature (or as an officer of the government of Guam)."

Examination of the documents you submitted, the Organic Act and the laws of Guam, notwithstanding your "firm belief," don't indicate that "...that you are duty bound to address decolonization ... on the local, regional, and world stages." Your failure to submit the requested documents (if such documents exist) relative to your "duty" constitutes a violation of the Sunshine Law. Rather than acting in accordance with a duty imposed upon you, by violating PL 35-36 Ch XIII Part I § 1. (i), it appears that you have violated the duty imposed upon you by the oath you swore to upon being seated in the 35th GL.

If you have documents that do show "...that you are duty bound to address decolonization ... on the local, regional, and world stages" please forward those documents at your earliest convenience.

Respectfully submitted,

Robert Klitzkie