

- 1 3) issuing a writ of review requiring Respondent to certify the record and proceedings of its
2 disciplinary action,
- 3 4) vacating and setting aside the Respondent's disciplinary decision, and
- 4 5) awarding costs to Petitioner.

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6 In support of these requests, on January 4, 2013 Petitioner filed a paper entitled, Petitioner's
7 Opening Brief. In his brief Petitioner argues that:

8 1) he was deprived of a fair hearing because:

- 9 a) the Respondent's board members were hostile and biased against him and should have
10 been disqualified, and
- 11 b) there was *ex-parte* contact between the prosecuting attorney and attorney general office;

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13 2) Respondent violated the Open Government Law when it:

- 14 a) prevented the disciplinary proceedings from being recorded, and
- 15 b) failed to give adequate notice of the disciplinary hearing;

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17 3) Respondent incorrectly decided Petitioner's motion to dismiss the charges against him;

18 4) The discipline imposed by the Respondent was unauthorized and excessive.

19 Petitioner asserts that the court is to apply a *de novo* standard of review.

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21 On February 1, 2013, Respondent filed a paper in opposition to Petitioner's requests
22 and opening brief. In its paper Respondent asserts that the standard of review is more
23 deferential to its decision than a *de novo* review and argues that the court is required to uphold
24 the board's decision unless it is not in accordance with law or supported by substantial
25 evidence. His paper in opposition also disputes Petitioner's assertions of: board bias, *ex-parte*
26 communication, due process, open government law violations, and excessive punishment.
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1 On February 15, 2013, Petitioner filed a paper in reply to Respondent's opposition
2 paper. In it Petitioner requests that the court, after reviewing the decision of the Respondent
3 find that the Respondent's decision, when viewed in its totality, was fundamentally unfair. In
4 support of this request the Petitioner reasserts its prior arguments and includes two new
5 assertions of: counsel animus and a structural bias in the administrative code.
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7 DISCUSSION

8 I. Standard of Review

9 In 2008 the Guam Supreme Court, reviewing an appeal from the Guam Superior Court's
10 review of the disciplinary decision of the Guam Board of Dental Examiners, explained the
11 standards of review that the Guam Superior Court is to apply to an administrative review writ of
12 mandate. *Sule v. Guam Bd. of Dental Examiners*, 2008 Guam 20 ¶¶ 8--11. The court is to review
13 *de novo* an administrative board's conclusions of law and affirm whether the board's findings of
14 fact are supported by substantial evidence. *Id.* at ¶ 8. Assertions that a petitioner's rights were
15 violated are reviewed *de novo*. *Id.* at ¶ 11.

16 II. Open Government Law, Statutory Notice

17 Petitioner argues that Respondent failed to follow the notice mandates of Section 8107 of
18 Title 5 of the Guam Code. In support of this he asserts that Respondent did not give the proper
19 48 hour notice and that it conducted business outside of the scope of its notice on April 17, 18,
20 19, 23, 24 and 24, 2012.

21 In opposition to this argument Respondent asserts and argues that Petitioner has waived
22 this argument because he failed to raise it before the board below. He asserts that this argument
23 is supported by Section 8115(c) of Title 5 of the Guam Code.

24 In reply Petitioner reasserts that the board failed to provide the statutorily mandated
25 notice of the hearings. He argues that Respondent has misapplied Section 8815(c) of Title 5 of
26 the Guam Code.

27 Chapter 8 of Title 5 of the Guam Code regulates the conduct of the Territory of Guam's
28 commissions, boards, and agencies. 5 GCA §§ 8101-104. Section 8107 of that title mandates

1 that all meetings be proceeded by five working days of, “public notice, and a second public
2 notice at least forty-eight (48) hours prior to the start of the meeting.” *Id.* at § 8107. Section
3 8108 of Title 5 requires that a written notice must be:

- 4 1) delivered personally, or by mail, to each member of a public agency;
- 5 2) given to each newspaper of general circulation and broadcasting station which airs a regular
6 local news program within Guam;
- 7 3) specify the time and place of the special meeting and the business to be transacted. *Id.* at §
8 8108. The same section proscribes that, “[n]o other business shall be considered at such
9 meetings by the public agency.”

10 Subsection 8115(c) of Title 5 of the Guam Code provides,

11 Any interested persons may commence an action by mandamus, injunction or
12 declaratory relief for the purpose of stopping or preventing a violation or
13 threatened violation of this Chapter by members of an agency or to determine the
applicability of this Chapter to actions or threatened future action of an agency

14 5 GCA § 8115(c).

15 In March of 2011 the Guam Supreme Court reviewing the mandates of the open
16 government law explained that Section 8114 of Title 5 requires that a violation of the notice
17 mandates of Section 8107, void the actions taken by the board. *Sule v. Guam Bd. of Examiners*
18 *for Dentistry*, 2011 Guam 5, ¶ 14-15. Respondent does not dispute that Respondent did not
19 provide adequate statutory notice for its disciplinary hearings. Nor does he dispute that these
20 hearings were essential to its June 13, 2012, final decision.

21 On its face Section 8115(c) does not require that a violation of notice provisions be
22 brought before the reviewing board prior to their being raised on a writ of mandate. 5 GCA §
23 8115(c). The court is unaware of any binding or persuasive precedent that requires that a
24 board’s failure to provide adequate notice is waived if it is not raised before that administrative
25 board. Absent further showing by the Respondent the court is unable to affirm its decision to
26 discipline Petitioner.
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1 **III. Board Animus, Board Bias, Counsel Bias, Statutory Bias, Ex-parte Communications,**
2 **Charging Deficiencies, Excessive and Unauthorized Discipline, and Recording Violation.**

3 Having found that the board below failed to provide adequate notice of its disciplinary
4 hearings of the Respondent the remaining assertions of error are moot.
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6 **IV. Costs**

7 Although in his initial paper Petitioner requests that he be awarded costs, his request is
8 not supported by any assertion or argument in his supporting papers. Petitioner's request is
9 denied.
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11 **CONCLUSION**

12 Based on the foregoing, the Court voids the June 13 2013, disciplinary decision of the
13 Respondent board against the Petitioner.
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15 SO ORDERED, this 18 day of JUNE 2013.
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21 HONORABLE MICHAEL J. BORDALLO
22 Judge, Superior Court of Guam
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JUN 18 2013

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