

FISHER & ASSOCIATES  

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ATTORNEYS AT LAW

**May 19, 2020**

**For Immediate Release** (*Hagåtña, Guam*) – Attorney Thomas J. Fisher is today filing a petition for a Writ of Mandamus in the Superior Court to compel compliance with Rule 8.406 of the Department of Administration's Personnel Rules and Regulations. A writ will cut through barriers of form and procedure by forcing the government of Guam to comply with the law.

"This should not be about politicians who hold leadership positions, it's about following the rule of law. When the government acts unlawfully, it is courageous government of Guam employees like Officer Steve Topasna who must pay the price and not the politicians," stated Fisher.

The petitioner, Guam Police Department Officer Steve Topasna, has reported for duty since March 16<sup>th</sup> under emergent and unsafe working conditions and continues to do so today. It is because of this that Officer Topasna has no other remedy than to ask for the court's intervention. It should be noted that the Governor Leon Guerrero, Police Chief Ignacio, Director Birn and Attorney General Camacho have each refused to give Officer Topasna and others like him their money which they have earned and deserve."

Attorney Fisher does not represent nor is he affiliated with the Guam Federation of Teachers ("GFT") which has publicly stated that GFT will take a wait and see approach to any future lawsuit.

For any further questions, please contact Fisher and Associates at (671) 472-1131 or email at [fisherassociates@teleguam.net](mailto:fisherassociates@teleguam.net).


Enclosed: Writ of Mandamus Special Proceeding # SP 0064-20.

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FILED  
SUPERIOR COURT  
OF GUAM

2020 MAY 19 AM 10:32

CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM  
TERRITORY OF GUAM

PO II STEVE TOPASNA, GUAM POLICE  
DEPARTMENT

DOES 1-100

Petitioners,

v.

GOVERNMENT OF GUAM

LOURDES LEON GUERRERO IN HER  
CAPACITY AS GOVERNOR OF GUAM

CAPT. STEVEN IGNACIO, IN HIS  
CAPACITY AS CHIEF OF POLICE, GUAM  
POLICE DEPARTMENT

MR. EDWARD BIRN, IN HIS CAPACITY  
AS DIRECTOR, GUAM DEPARTMENT OF  
ADMINISTRATION

Respondents.

Special Proceeding Number **SP 0064-20**

**PETITION FOR A WRIT OF  
MANDAMUS**

**\*\*\* PETITION \*\*\***

**COMES NOW** Petitioners and pray this Court issue a peremptory or alternate writ of mandamus commanding the Respondents to place each Petitioner, and those similarly situated, in a status of paid leave not charged to his or her annual leave or otherwise. Additionally, Petitioners pray that this Court command the Respondents to compensate the Petitioners and those similarly situated, through law or equity, double pay for labor rendered while on duty and on duty contrary to law.

Petition  
SP \_\_\_\_\_

1 **I. INTRODUCTION**

2 1.1 Contrary to law, and without authority, Respondents have refused to place Petitioners  
3 on administrative leave with pay and without charge to leave.

4 1.2 Further, and alternatively, Respondents have refused to award Petitioners "double pay"  
5 in accordance with, and as required by law.

6 **II. JURISDICTION**

7 2.1 The Superior Court has Jurisdiction over this Matter pursuant to 7 G.C.A. §31202 and  
8 48 USC §1421-1(b).

9 **III. THE PARTIES**

10 3.1 Petitioner Topasna is a natural born person, a citizen of Guam and a member of the  
11 Guam Police Department.

12 3.2 Petitioners Does 1-100 are employees of the Government of Guam who were required  
13 to work during a present public health emergency who;

14 a. were not given excused absences with pay and without charge to leave, and

15 b. were not awarded double pay for each hour of service during the emergency.

16 These Petitioners will be further identified in the course of this litigation.

17 3.3 Respondent Government of Guam is a political entity created by the United States in  
18 order to govern and administer the territory known as Guam ceded to the United States in  
19 accordance with the provisions of the Treaty of Peace between the United States and the  
20 Kingdom of Spain, signed at Paris, December 10, 1898. *See 48 U.S.C. §1421.*

21 3.4 Respondent Leon Guerrero is the current Governor of the Territory of Guam and  
22 responsible for due and faithful execution of the law and the law as it pertains to the executive  
23 branch of the Government of Guam. *See 48 U.S.C. §1422.*

24 3.5 Respondent Ignacio is the current Chief of the Guam Police Department and  
25 responsible for the oversight, daily operation, and personnel issues of that department.

1 3.6 Respondent Birn is the current head of the Department of Administration and as such,  
2 is responsible for the disbursement of monies to employees of the Government of Guam for  
3 services rendered.

#### 4 IV. FACTUAL ALLEGATIONS

5 4.1 Petitioner is beneficially interested in the performance of Respondents as he is an  
6 employee of the Government of Guam and has been an employee during the recent public health  
7 emergency.

8 4.2 On or about March 16, 2020 and on following dates Respondent Leon Guerrero  
9 declared a Public Health Emergency. *See Declaration, Thomas J. Fisher at Exhibits A through*  
10 *G.*

11 4.3 Pursuant to law, during natural disasters and other emergency conditions, excused  
12 absence with pay and without charge to leave **shall** be granted to Government of Guam  
13 employees when natural disasters or other emergency conditions create unsafe working  
14 conditions. *See Government of Guam Personnel Rules and Regulation at 8.406 and Declaration,*  
15 *Fisher (emphasis added).*

16 4.4 Had Respondents obeyed the requirements of law, Petitioner would have been placed on  
17 an excused absence with pay and without charge to leave. *See Id at 8.406 and Declaration,*  
18 *Fisher (emphasis added).*

19 4.5 Respondents did not obey the law and Petitioner was required to work during each day  
20 of the emergency. Further, each Petitioner is still required to work during the emergency and is  
21 not granted excused absences with pay and without charge to leave. *See Declaration of*  
22 *Petitioner.*

23 4.6 Though required to appear at work and perform during the emergency, Petitioner has  
24 not received double pay for each hour worked.

25 4.7 Respondents have the present ability to comply with the law and perform their duty.

1 4.8 Personnel Rule and Regulation, Department of Administration, Government of Guam  
2 Rule 8.406 states,

3 8.406 Natural Disasters and Other Emergency Conditions

4 A. Excused absence with pay and without charge to leave shall be granted to  
5 employees when natural disasters or other emergency conditions create unsafe working  
6 conditions.

7 B. Excused absence, for natural disaster or other emergency conditions, may be  
8 granted only when there has been an official proclamation of the hazardous conditions  
9 by Executive Order, or an equivalent announcement by the Governor.

10 C. When the Governor declares a State of Emergency, the appointing authority  
11 shall determine whether affected facilities or portions thereof, which are located in the  
12 area covered by the Executive Order or proclamation, are to be closed.

13 1. Except for those employees determined by the appointing authority to be  
14 necessary for providing essential services, employees shall be released from  
15 duty with pay, without charge to leave, for the period the facility is closed.

16 2. Those employees, required to remain on duty to provide essential services,  
17 shall be paid at double the regular rate, or granted compensatory leave credits  
18 for the hours worked during the period the facility is closed and the other  
19 employees are on excused leave.

20 D. Employees who are on annual or sick leave status when an emergency  
21 condition is declared by Executive Order, or announcement by the Governor and are  
22 not required to report to duty, shall be considered as released from duty with pay  
23 without charge to leave for the period the work facility is closed.

24 4.9 There is no plain, speedy or adequate remedy for this wrong since it is visited upon the  
25 Petitioners each day now and into the future.

**V. PRAYER**

**WHEREFORE** Petitioners request;

1. That a peremptory or alternative writ of mandate issue ordering Respondents to  
comply with the requirements of Rule 8.406 or appear before this Court and show cause  
why they need not.

