



BEFORE THE
 GUAM CIVIL SERVICE COMMISSION
 BOARD OF COMMISSIONERS



IN THE MATTER OF:

RAYMOND C. BENAVENTE,

Employee,

vs.

GUAM POLICE DEPARTMENT,

Management.

ADVERSE APPEAL
 CASE NO.: 0707-AA16

DECISION AND
 ORDER

This matter came before the Commission for hearing on Management’s Motion to Dismiss Employee’s Appeal With Prejudice on November 7, 2017. The basis for this motion was pursuant to Adverse Action Rules (“AAR”) 12 and 12.1, Employee died on March 17, 2012, and his estate has not requested to pursue his adverse action appeal as required under Civil Service Commission rules. The five members of the Commission also present were Chairperson Edith Pangelinan, Vice-Chairperson Lourdes Hongyee, Priscilla T. Tuncap, John Smith, and Michael G. Topasna.

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DECISION AND ORDER

Raymond C. Benavente vs. Guam Police Department
 Adverse Action Appeal Case No. 0707-AA16

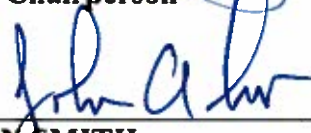
1 By a vote of 5 to 0, Management's Motion to Dismiss Employee's Appeal With
2 Prejudice is hereby granted.

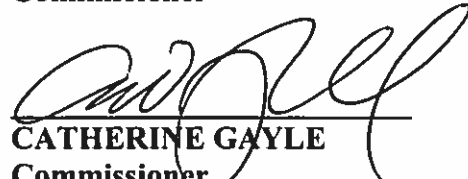
3 SO ADJUDGED THIS 11th DAY OF January 2018.

4 
5 EDITH FANGELINAN
6 Chairperson


LOURDES HONGYEE
Vice-Chairperson

7 
8 PRISCILLA T. TUNCAP
Commissioner


JOHN SMITH
Commissioner

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10 CATHERINE GAYLE
11 Commissioner

MICHAEL G. TOPASNA
Commissioner

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23 **DECISION AND ORDER**

Raymond C. Benavente vs. Guam Police Department
Adverse Action Appeal Case No. 0707-AA16

ORIGINAL

MOTION HEARING

TUESDAY, NOVEMBER 7, 2017

RAYMOND C. BENAVENTE

Employee

VS.

GUAM POLICE DEPARTMENT

CASE #

16

PERSE ACTION APPEAL

✓
Voted in Favor
of MH
5-0 on 11/7/2017

**CIVIL SERVICE COMMISSION
MOTION HEARING
OPENING STATEMENT**

The Civil Service Commission is now in session to hear Management's Motion in the ADVERSE ACTION APPEAL OF RAYMOND C. BENAVENTE, Case No. 0707-AA16, hereafter the Employee, versus the Guam Police Department, hereafter the Management.

My name is Edith Pangelinan, Chairperson. Commissioners and staff present are:
(Introduction)

MOTION TO BE HEARD

**MANAGEMENT'S MOTION TO DISMISS EMPLOYEE'S APPEAL
WITH PREJUDICE**

Will the parties please introduce themselves for the record?

Since the motion to be addressed tonight has been submitted by the Management, Management will open and Employee may rebut. Employee will then close.

This hearing will be confined strictly to the motion.

Let's proceed with the Motion Hearing...beginning with Management.

MANAGEMENT DOCUMENTS

of the Notice of Final Adverse Action. See M-1. Management requests that the CSC take judicial notice of the complete document on file with the CSC.

On July 30, 2007, employee's attorney, Cunliffe & Cook, filed an appeal from the Final Notice of Adverse Action. Please see only the first page of the employee's appeal. See M-2. The complete appeal is in the CSC's file if review is necessary for purposes of this motion.

On or about March 17, 2012, Raymond C. Benavente died. Please find enclosed the obituary and funeral announcement. See M-3 through M-4. The fact of Mr. Benavente's death was also confirmed by his attorney, Jeffrey A. Moots, Esq., to CSC staff at an appearance before the CSC relating to this adverse action appeal.

At a status conference on September 20, 2012, Mr. Benavente's attorney, Jeffrey A. Moots, Esq. informed that the Estate had until that date to file an interest to the appeal pursuant to CSC AAR Rule 12.1 and to his knowledge an Estate had not come forward.

As of today's, date, the employee's estate has not pursued the adverse action appeal nor has it entered an appearance in this matter.

Authority to Dismiss with Prejudice

CSC AAR Rule 12.1 states in pertinent part as follows: "If an Employee dies after he has filed an appeal of an adverse action taken against him, the appeal shall automatically be stayed for a period up to six (6) months in order for the Estate of the Employee to apply to the CSC to continue with the appeal. If the Estate of the Employee does not so apply within six (6) months, then the appeal **shall be dismissed** upon a motion by Management..." (emphasis added).

As stated above, Raymond C. Benavente died on March 17, 2012. Six months from the date of his death was September 17, 2012. The Estate of Raymond C. Benavente has not filed an entry of appearance nor has it requested to continue with Raymond C. Benavente's adverse action appeal.

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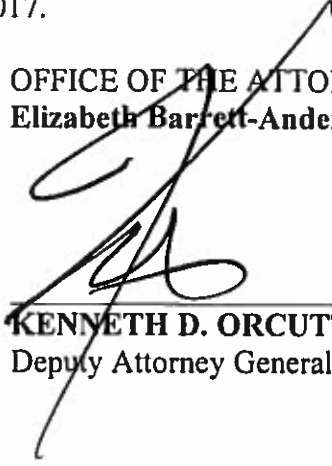
At the last CSC status conference in this matter on September 20, 2012, Jeffrey A. Moots Esq., acknowledged that he was representing Raymond C. Benavente, deceased. Moreover, he indicated he has not been retained by the Estate of Raymond C. Benavente.

Since no application to continue with the adverse action appeal was timely made under the CSC adverse action rules, and no such application has been made to date regardless of the stated time period in Rule 12.1, Management respectfully requests that the CSC dismiss the adverse action appeal with prejudice forthwith pursuant to CSC Rules 12.1.

Dated this 15th day of September, 2017.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



KENNETH D. ORCUTT
Deputy Attorney General

GOVERNMENT OF GUAM
GUAM POLICE DEPARTMENT
NOTICE OF ADVERSE ACTION

Department of Administration
Human Resources Division

JUL 10 2007
Lennie Guzman

IAS CASE NO. 07-039
SJD: 133

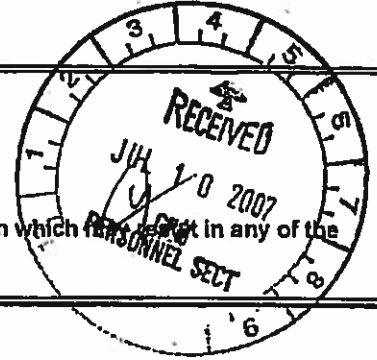
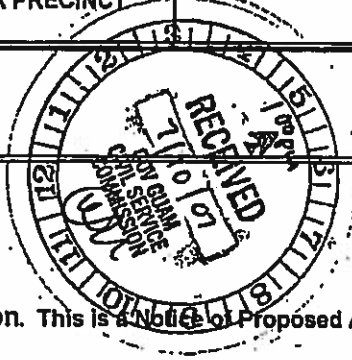
NAME OF EMPLOYEE (First, Middle, Last) RAYMOND C. BENAVENTE	RANK OR TITLE: POLICE OFFICER II	Administrative Office
BUREAU OR DIVISION NEIGHBORHOOD PATROL DIVISION - HAGATNA PRECINCT COMMAND	DATE OF THIS ACTION: JUL 07 2007	

LAST KNOWN ADDRESS
GUAM POLICE DEPARTMENT

TYPE OF ACTION

Final Notice of Adverse Action

Notice of Proposed Adverse Action. This is a Notice of Proposed Adverse Action which falls under in any of the following:



<p>A. DISMISSAL (Temporary Intermittent, Provisional, Seasonal or Part Time)</p> <p>Effective _____</p> <p>There is no appeal from this action. Refer to Department of Administration.</p>	<p>A. SUSPENSION:</p> <p>Effective: _____</p> <p>You may appeal this action in accordance with the procedures outlined on page 4.</p>
<p>B. DISMISSAL (From Permanent Appointment)</p> <p>Effective <u>12:00 A.M., WEDNESDAY, JULY 11, 2007</u></p> <p>You may appeal this action in accordance with the procedures outlined on the reverse side.</p>	<p>D. DEMOTION:</p> <p>Effective _____</p> <p>You may appeal this action in accordance with the procedures outlined on the reverse side.</p>

Acting Chief of Police CAPTAIN PAUL R. SUBA	Signature <i>Paul R. Suba</i>	Date 7/7/07
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Signature of Employee Being Served RAYMOND C. BENAVENTE	Date	Time
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I hereby certify that the original copy of this notice was served on the subject employee on this 9th day of July 2007, at 275 Fomento Perpetua St., Hagatna

<input checked="" type="checkbox"/> Served Personally	<input type="checkbox"/> Copy left at last known address.	<input type="checkbox"/> Registered Mail
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Print name of person who served notice <i>Sgt L. L. Quichaco</i>	Signature of person who served notice <i>L. L. Quichaco</i>
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*Employee declined to sign Final Adverse Action.
4:07 pm 7-9-07.*

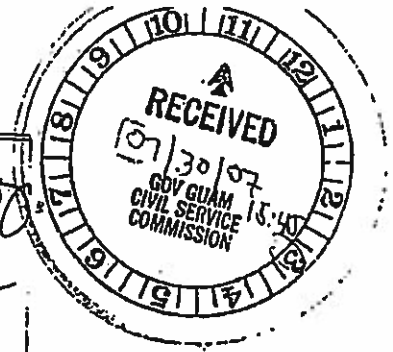
**LAW OFFICES
CUNLIFFE & COOK**
210 Archbishop F.C. Flores Street
Hagåtña, GU 96910
Telephone: (671) 472-1824
Telefax: (671) 472-2422

Attorneys for: **Employee**

RECEIVED

JUL 30 2007

Guam Police Department
Office of the Chief



**BEFORE THE CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM**

IN THE MATTER OF:
RAYMOND C. BENAVENTE,

Employee.

vs.

GUAM POLICE DEPARTMENT,

Management.

ADVERSE ACTION NO. _____

NOTICE OF APPEAL

COMES NOW, RAYMOND C. BENAVENTE (hereafter "EMPLOYEE"), through counsel, **CUNLIFFE & COOK**, A Professional Corporation, by F. Randall Cunliffe, Esq., and hereby appeals the Final Adverse Action taken against her by **GUAM POLICE DEPARTMENT** (hereafter "MANAGEMENT") for the following reasons:

- (1) The action taken violates the Due Process and Equal Protection Clauses of the United States Constitution and the Organic Act of Guam.
- (2) The findings are incorrect and misstate the facts of this situation.
- (3) The action taken by Management is not supported by the evidence.
- (4) The Notice of Proposed Adverse Action does not comply with the Rules and Regulations of Management, or the provisions that are contained in 4 Guam Code Annotated applicable to adverse actions.
- (5) The action taken in this case is too severe for the alleged violation.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Employee

DATED: July 30, 2007

By F. Randall Cunliffe
F. RANDALL CUNLIFFE, ESQ.

FRC:rsb SEC 2 Civil Service Commission
B0204 1 Ntc of Appeal

Raymond Cruz Benavente



"Ray" – "R.C." Familiar "Bruno" August 29, 1959 – March 17, 2012 of Mangilao, was called home by our heavenly Father at the age of 52. Rosary is being prayed each evening at 8 p.m. at the residence of Lonnie and Vivian Clark, 277 Matsumiya Street (via Route 15) in Mangilao. Last Respects for Raymond will be held on Tuesday, March 27 th from 9 a.m. to 12:15 p.m. at Santa Teresita Catholic Church in Mangilao. Mass for a Christian burial will be offered at 1 p.m. Interment will follow at Guam Memorial Park in Lembang --Barrigada, where we will bid him farewell and a peaceful rest.

View the ad as it appeared in print.

Published in Pacific Daily News from March 23 to April 22, 2012

In Loving Memory

Raymond Cruz Benavente

"Ray" - "R.C."

Familian "Bruño"

August 29, 1959 - March 17, 2012

Of Mangilao, was called home by our heavenly Father at the age of 52.

Rosary is being prayed each evening at 8 p.m. at the residence of
Lonnie and Vivian Clark, 277 Matsumiya Street (via Route 15) in Mangilao.

He will be met at the gates of heaven by his

Parents: Manuel Q. and Andresina C. Benavente; **Brothers / Sisters and Spouses:** Richard C. Benavente, Manuel C. Benavente, Edward C. Benavente, Francisco C. and Maria Benavente, Florence B. Blas, Juan C. Benavente, Mae C. Benavente, Julia L. Cruz, James Lute.
Close and Special Friend: Delores S. Tajeron.

Raymond's love and memories will be
cherished forever in the hearts of his

Sons / Daughters and Spouses (Grandchildren): Craig S. Benavente and Evelyn Carreon (Christian, Eleanna); Jacqueline B. and Patrick Whitener (Emily, Kade, Quinton); Raymond C. Benavente, Jr., Lani and John DeVicente (Nalani, Leila); Justin R. and Danessa Benavente; Mariah R. Benavente; Anthony Reyes; Rachelle M. Benavente; Peter J. Benavente; **Brothers / Sisters and Spouses:** Francisco C. and Teresita N. Lizama, Tomas C. and Anita T. Lizama, Teresita B. Lute, Antonio C. Benavente, Danny C. and Marie S. Benavente, Vincent C. and Linda C. Benavente, Peter C. and Mona Lisa Benavente, Vivian B. and Lonnie Clark, Remedios Q. Benavente

*Numerous aunts, uncles, cousins, nieces,
nephews and friends will also miss him.*

Last Respects for Raymond will be held on Tuesday, March 27th from 9 a.m. to 12:15 p.m. at Santa Teresita Catholic Church in Mangilao.

Mass for a Christian burial will be offered at 1 p.m.

Interment will follow at Guam Memorial Park in Loyal Heights, where we will bid him farewell and a peaceful rest.

Guam Memorial Funeral Home



4710
1/1
elk

CIVIL SERVICE COMMISSION

GOVERNMENT OF GUAM

IN THE MATTER OF:
Raymond C. Benavente
Employee,
vs.
Guam Police Department
Management.

ADVERSE ACTION APPEAL
CASE NO: 0707-AA16

Notice of Status Call Conference

TO: Donna Lawrence
287 West O'Brien Drive
Hagatna, Gu 96910
475-3324 687-8585
FAX: 472-2493

THE ABOVE CAPTIONED case has been SCHEDULED at the Civil Service Commission Conference Room, Suite 6A, 777 Route 4, Sinajana, Guam 96910.

TYPE OF MEETING	MEETING DATE	MEETING TIME
Status Call Conference	Thursday, September 20, 2012	2 :00 PM

MEMO

Should you have any questions, please contact Roland Fejerang or our office at 647-1855, 647-1857, FAX 647-1867, TTY 649-7002.


 ALBERTO "TONY" A. LAMORENA V
 Executive Director

9/4/2012
Date

2.0217/bz

M-5



The filing of a motion to reconsider or amend does not affect the time limit imposed by law to file a Petition for Judicial Review with the Superior Court of Guam.

If a motion to amend or reconsider is not decided within thirty (30) days of the entry of a judgment, the motion is denied.

RULE 11.7.8 JUDICIAL REVIEW

Judicial review of the judgment of the CSC may be had by filing appropriate pleadings with the Superior Court of Guam within thirty (30) days after judgment is entered. *See Superales v. CSC and GIAA*; Superior Court of Guam Case No. SP261-00 (DATE).

RULE 12 TERMINATION OF APPEAL

In addition to adjudication on the merits, the CSC may terminate an Employee's appeal:

- a. At the Employee's request;
- b. When the Employee fails to furnish information necessary to adjudicate the appeal.

RULE 12.1 DEATH OF EMPLOYEE

If an Employee dies after he has filed an appeal of an adverse action taken against him, the appeal shall automatically be stayed for a period up to six (6) months in order for the Estate of the Employee to apply to the CSC to continue with the appeal.

If the Estate of the Employee does not so apply within six (6) months, then the appeal shall be dismissed upon a motion by Management.

If the Estate of the Employee does so apply, then the appeal shall be adjudicated.

In the event the Employee prevails, the Estate of the Employee shall receive the compensation, but not the benefits, the Employee would have recovered up to the date of his death.

RULE 13 REPRESENTATION OF EMPLOYEES BY PERSONS WHO ARE NOT ATTORNEYS

The laws of Guam permit persons who are not attorneys to represent Employees and Management before the CSC as follows:

- a. 7 GCA § 9215(c)(16) permits a person who is not an attorney to represent an employee before the CSC in actions related to government service.
- b. 7 GCA § 9215(c)(12) permits a government employee to represent a government agency in "administrative hearings" as part of such person's official duties.

RULE 13.1 RULES RELATIVE TO REPRESENTATIVES

A non-lawyer or attorney not licensed to practice on Guam who represents an Employee before the CSC or who represents a government agency before the CSC, shall be called a "Lay Representative."

All Representatives shall enter his appearance in an action by filing with the CSC an entry of appearance which shall include the written approval of his client and shall also contain the address and telephone number of the Representative.

RULE 13.2 ENTRY OF APPEARANCE

EMPLOYEE DOCUMENTS

**LAW OFFICES
CUNLIFFE & COOK**
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910-5189
Telephone: (671) 472-1824
Telefax: (671) 472-2422



Attorneys for: Employee

BEFORE THE CIVIL SERVICE COMMISSION
Government of Guam

IN THE MATTER OF:)	ADVERSE ACTION APPEAL
)	CASE NO. 0707-AA16
RAYMOND C. BENAVENTE,)	
)	
Employee.)	NON-OPPOSITION TO GUAM
)	POLICE DEPARTMENT'S
vs.)	MOTION TO DISMISS EMPLOYEE'S
)	APPEAL WITH PREJUDICE
GUAM POLICE DEPARTMENT,)	
)	
Management.)	
_____)	

COMES NOW, Employee RAYMOND C. BENAVENTE, through counsel, law offices of **CUNLIFFE & COOK**, A Professional Corporation, by F. Randall Cunliffe, Esq., and hereby enters his non-opposition to Management's Motion to Dismiss Employee's Appeal with Prejudice filed September 18, 2017, in the above-entitled matter.

Dated this 26th day of September, 2017.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Employee Raymond C. Benavente

By *F. Randall Cunliffe*
FOR **F. RANDALL CUNLIFFE, ESQ.**