

**IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
TRIAL DIVISION**

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| <p><b>REPUBLIC OF PALAU,</b><br/><i>Plaintiffs,</i><br/>v.<br/><b>FANG YE, LIU XIAOYAN, LI XINYU, and LI SONGYAN</b><br/><i>Defendants.</i></p> |
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Cite as: 2024 Palau 34  
Criminal Action No. 24-001

Decided: February 28, 2024

BEFORE: LOURDES F. MATERNE, Associate Justice, presiding

**ORDER DENYING DEFENDANT’S MOTION**

[¶ 1] Before the Court is Defendant’s “Motion to a) Allow [Defendant] to Have Consultation with His Attorney at [the] Law Office; b) Allow Him to Examine the Alleged Sites Related to This Case Accompanied by His Attorney; and c) Require that He Submits to Medical Check Up” filed on February 22, 2024. For the reasons set forth below, Defendant’s Motion is **DENIED**.

**DISCUSSION**

[¶ 2] Under Rule 12, “[t]he moving party shall set forth in the motion the basis for the motion and the specific relief requested,” and when it “requires consideration of matters not established by the complaint or information, the moving party, at the time of filing the motion, shall also file such evidentiary materials . . . as are being relied upon.” ROP R. Crim. P. 12(c)(1), (3).

**I. Consultation at Attorney’s Office**

[¶ 3] “At all times, [a] person accused [of a criminal offense] shall have the right to counsel.” ROP Const. art. IV, § 7. “When interpreting the nature of the right to counsel in Palau, the [Court] has looked to the United States and its interpretation of the Sixth Amendment to its constitution.” *Yoshiwo v. ROP*,

2022 Palau 15 ¶ 17. For pretrial detainees, this includes the right to meet and communicate with their attorney in private to discuss their case. *See Cnty. of Nevada v. Superior Ct.*, 187 Cal. Rptr. 3d 27, 33 (Ct. App. 2015); *Maine v. Moulton*, 474 U.S. 159, 170 (1985). However, there is no guarantee of full and unfettered contact between detainee and counsel. *See Cnty. of Nevada*, 187 Cal. Rptr. 3d at 34; *Mann v. Reynolds*, 46 F.3d 1055, 1060 (10th Cir. 1995); *Morris v. Slappy*, 461 U.S. 1, 14 (1983). Prison and jail authorities are given deference in developing policies to preserve internal order, but “prison policies may not unnecessarily abridge a defendant’s meaningful access to his attorney.” *Cnty. of Nevada*, 187 Cal. Rptr. 3d at 34. Therefore, in determining whether to modify existing facilities and/or procedures to accommodate attorney-client visits, jail officials are in the best position to balance the detainee’s right to counsel against the government’s legitimate interests of security and order. *See id.*; *Feely v. Sampson*, 570 F.2d 364, 373–74 (1st Cir. 1978).

[¶ 4] It is the duty of the Bureau of Public Safety (“BPS”) “to preserve peace [and] maintain order,” and generally, all “[o]fficers shall, at all times, take appropriate action to . . . protect constitutional guarantees.” Bureau of Pub. Safety Rules & Reguls. art. II, § 2; *id.* art. VI, § 4.1 (2017) [hereinafter BPS Rules]. This Court recognizes Defendant’s legitimate concern that the visitation room may fail to ensure attorney-client privilege and confidentiality. However, Defendant should raise this issue and seek accommodation from the BPS, in good faith, before requesting court action as deference is given to the BPS in preserving security and order.

## II. Site Visits

[¶ 5] It is the movant who bears the burden of showing that the requested relief is warranted, and the court should neither have to speculate the reasoning nor the result that the movant hopes to achieve. *See* ROP R. Crim. P. 12(c). Defendant’s Motion simply requests to allow Defendant to “accompany his attorney to visit and inspect the sites allegedly related to the criminal offenses he is charged with.” Although a supplemental brief in support is not required, *id.* 12(c)(1), on its face, this motion fails to state the basis and reasoning for allowing Defendant to make site visits with his counsel, for example, explaining the location(s) and why.

### III. Medical Check-up

[¶ 6] Article IV of our Constitution also prohibits “[t]orture, cruel, inhumane or degrading treatment or punishment.” ROP Const. art. IV, § 10. At a minimum, pretrial detainees have the same rights as a convicted prisoner. *See Bell v. Wolfish*, 441 U.S. 520, 545 (1979); *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1997). *See generally* 1 PNC § 303 (applying the rules of the common law of the U.S. in the absence of applicable Palauan statutory or customary law). The BPS Rules follow this constitutional requirement as it requires “[a]ll prisoners [to] be treated with respect and dignity” such that “all prisoners are entitled to receive and will be granted . . . adequate medical treatment” and “[w]hen a prisoner is ill, medical treatment shall be immediately sought.” BPS Rules art. VIII, §§ 2.1, 2.4, 2.7.

[¶ 7] If Defendant is concerned about his physical condition or requires medical treatment, counsel should first seek to resolve this issue with the BPS. While the Court does not require personal medical details, sufficient information must be provided as to how the medical condition is or will impede Defendant’s ability to fully examine and confront the witnesses against him. *See* ROP Const. art. IV, § 7; *Dulei v. ROP*, 2017 Palau 29 ¶ 6. Simply stating that Defendant “has been complaining . . . of his medical condition” is insufficient.

### CONCLUSION

[¶ 8] For the foregoing reasons, Defendant’s Motion is **DENIED**. Prior to seeking court action, Defendant shall raise any concerns to the Division of Corrections and confer, or attempt to confer, in good faith to address the issues. Where the BPS fails to act or acts unreasonably, this Court does not preclude the possibility of future motions from Defendant, provided there is sufficient information for this Court to make an informed and meaningful decision.

**SO ORDERED** this 28th day of February 2024.