

DISCIPLINARY RULES AND PROCEDURES

FOR ATTORNEYS AND TRIAL COUNSELORS PRACTICING IN THE NATIONAL COURTS OF THE FEDERATED STATES OF MICRONESIA

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RULE 1. JURISDICTION

Any attorney, trial counselor, or other person who practices law before the Supreme Court of the Federated States of Micronesia or other national court that may be established pursuant to section 1, article XI of the Constitution is subject to these rules. The word "attorney" as used herein shall mean a lawyer, trial counselor, or other person who practices law in the national courts.

Nothing herein shall be construed to deny any court its inherent and statutory power to maintain control over proceedings conducted before it.

These rules are promulgated pursuant to section 9(e), article XI of the Constitution.

RULE 2. GROUNDS FOR DISCIPLINARY ACTION

An attorney may be subject to discipline as provided for by these rules for any of the following grounds occurring within or outside of the Federated States of Micronesia.

(a) Violation of the Model Rules of Professional Conduct as adopted by the Supreme Court, or to induce another to do so, or to do so through the acts of another.

(b) Commission of a criminal act that reflects adversely on the person's honesty, trustworthiness, or fitness as an attorney in other respects.

(c) Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) Willful disobedience or violation of a court order directing the attorney to do or cease doing an act which the attorney ought in good faith to do or forbear, including an order imposing discipline.

(e) Misrepresentation or concealment of a material fact in an application for admission to the bar, including *pro hac vice*, or for reinstatement.

(f) Suspension, disbarment, or other disciplinary sanction by the competent authority in any state or foreign jurisdiction.

(g) Knowingly failing to respond to a lawful demand from a disciplinary authority, except that disclosure of information otherwise protected by applicable rules relating to confidentiality shall not be required.

(h) (1) Practice of law with or in cooperation with a disbarred or suspended attorney, (2) maintenance of an office for the practice of law in a room or office used or occupied in part by a disbarred or suspended attorney.

(3) Permitting a disbarred or suspended attorney to use the attorney's name for the practice of law, (4) practice of law for or on behalf of a disbarred or suspended attorney, and (5) practice of law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney not authorized to practice law.

(i) Engaging in the practice of law before the national courts without first being permitted to do so pursuant to the FSM Supreme Court Rules of Admission.

(j) Knowing assistance to a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

RULE 3. TYPES OF DISCIPLINE

Discipline may consist of: (a) disbarment, (b) suspension for an appropriate fixed period of time not to exceed five years, (c) public reprimand or censure, (d) private reprimand or censure, (e) restitution to persons financially injured, (f) a fine, (g) limitation of the nature or extent of the attorney's future practice, or (h) probation under conditions for a fixed period not to exceed five years, and (i) assessment of costs of the proceedings.

RULE 4. INITIAL PROCESSING OF COMPLAINTS

(a) Charges of professional misconduct may be initiated by any justice of the Supreme Court upon motion by that justice or by any other person by advising the court of the nature of the charge and indicating the factual basis for the charges.

(b) All complaints concerning violations of these rules shall be referred to the Chief Justice. The Chief Clerk of the Supreme Court shall then assign the complaint a disciplinary proceeding docket number and open a file. The Chief Justice shall undertake, or cause to be undertaken by another justice of the Supreme Court, a preliminary review of the charge. The reviewing justice may dismiss the complaint if he determines that it is plainly without merit. If the reviewing justice determines that further action is justified, the Chief Justice shall appoint a Disciplinary Counsel to investigate the complaint and to prosecute the same before the Supreme Court.

(c) Upon appointment the Disciplinary Counsel shall forthwith notify the respondent attorney of the substance of the complaint and permit him to submit evidence and argument relative to thereto. The Disciplinary Counsel shall investigate to the extent necessary the allegations of the complaint, and shall submit within 30 days a written report of findings and recommendations to the reviewing justice. An extension of time for filing the report may be granted for good cause shown.

(d) Where a complaint is filed asserting that an attorney has violated these rules in the prosecution or defense of a matter then pending in either the Trial or Appellate Division of the Supreme Court, that complaint shall be referred in the first instance to the justice, or in an appellate Case, to the presiding justice of the panel, before whom the matter is pending. With respect to matters pending before an associate justice, that justice shall recommend to the Chief Justice within 5 days of receipt of the complaint whether (1) the complaint should be processed as set forth in subsection (b) of this rule, (2) the processing of the complaint should be deferred pending resolution of the matter from which the complaint arose, or (3) the complaint should be dismissed. With respect to matters pending before the Chief Justice, or upon the recommendation of an associate justice with respect to matters pending before that justice, the Chief Justice shall then act in accordance with one of these three alternatives. The Chief Justice may exercise discretion in the choice of alternatives.

RULE 5. ACTION BY THE REVIEWING JUSTICE

(a) Except as otherwise herein provided, proceedings before a reviewing justice shall be governed by the Rules of Civil Procedure of the Supreme Court and shall be confidential.

(b) Upon receipt of the Disciplinary Counsel's report, the reviewing justice shall, within ten days, determine what course of action to take. If the reviewing justice determines that the complaint is unfounded, trivial, or otherwise lacking in merit, the justice shall dismiss the complaint and notify the respondent attorney forthwith. If the reviewing justice finds that complaint appears to justify the taking of evidence and the

finding of further facts, the justice shall direct the Disciplinary Counsel to file a formal complaint within ten days and shall schedule the matter for a formal hearing within thirty days.

(c) The formal complaint and notice of hearing shall be served on the respondent attorney, who shall file an answer within twenty days. Failure to file an answer shall constitute an admission of the allegations in the complaint.

(d) The formal hearing shall be held in whichever of the states of the Federated States of Micronesia that is most appropriate, and shall be closed to the public, unless the respondent attorney requests otherwise. The reviewing justice may allow the attendance of the complainant.

(e) The standard of proof for establishing allegations of misconduct shall be clear and convincing evidence.

(f) Respondent attorneys shall have the right to compel the attendance of witnesses on their behalf, and to cross-examine witnesses against them.

(g) The reviewing justice shall render a decision within 20 days of the conclusion of the hearing. If the reviewing justice finds the allegations of misconduct are proven, the Justice shall impose an appropriate sanction or combination of sanctions pursuant to Rule 3 hereof. In considering what would be an appropriate disposition of the case, the reviewing justice may take into account prior disciplinary actions involving the respondent attorney.

(h) The reviewing justice's decision shall remain confidential unless the decision results in the respondent attorney's disbarment, suspension, or public reprimand or censure, or the reviewing justice directs otherwise, giving the reasons therefor. The complainant shall be informed of the reviewing justice's decision.

(i) The decision of the reviewing justice may be appealed to the appellate division of the Supreme Court within the time period allowed by Rule 4(a) of the Rules of Appellate Procedure of the Supreme Court.

RULE 6. REFUSAL OF COMPLAINANT TO PROCEED

Neither unwillingness of a complainant to sign a complaint nor otherwise prosecute a charge for any reason, including settlement between the complainant and the attorney, or restitution by the attorney to the complainant shall, in itself, justify abatement of the processing of any complaint.

RULE 7. RELATED PENDING CIVIL OR CRIMINAL LITIGATION

(a) Processing of a complaint shall not be deferred or abated because of the substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Chief Justice in his discretion for good cause shown.

(b) The acquittal of an attorney on criminal charges or verdict or judgment in his favor in civil litigation involving substantially similar material allegations shall not in itself justify abatement of a disciplinary action predicated on the same material allegations.

RULE 8. SERVICE

Service upon the respondent attorney of the formal complaint shall be personal service by a person or agency authorized by the court. Service may also be accomplished by any method consistent with Rule 4 of the FSM Supreme Court Rules of Civil Procedure.

RULE 9. SUBPOENAS AND WITNESSES

(a) Upon application of the Disciplinary Counsel, or by order of the reviewing justice, any clerk of the Supreme Court may issue subpoenas to compel the attendance of the respondent attorney or of a witness, or production of books, papers, or documents at the taking of a deposition or at a hearing before the reviewing justice.

(b) A respondent attorney may compel by subpoena the attendance of witnesses and the production of books, papers, or documents at a hearing or deposition.

(c) Discovery proceedings shall be by order of the reviewing justice.

RULE 10. CRIMINAL CONVICTION

(a) Upon the filing with the Chief Justice of a certificate of a clerk of court demonstrating that any attorney has been convicted of a crime which is a felony or which involves fraud, dishonesty, or corruption, pending final disposition of the disciplinary procedure to be commenced upon such conviction, the Chief Justice shall enter an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law, whether the conviction resulted from a plea of guilty, *nolo contendere*, or from a verdict after trial or otherwise, regardless of the pendency of an appeal.

(b) Final conviction of an attorney for any crime within this rule shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon that conviction. For the purposes of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted.

(c) Upon the receipt of a certificate of conviction of an attorney for a crime described in subsection (a) of this rule, even if the attorney is not restrained from the practice of law, the Chief Justice shall refer the matter thereafter as provided in Rule 4, and a hearing shall be instituted as provided in Rule 5 at which the sole issue to be determined shall be the extent of the discipline to be imposed, provided that hearing shall be after the judgment of conviction is final, unless the respondent attorney requests one earlier.

(d) Immediately upon the filing with the Chief Justice of a certificate demonstrating that the underlying conviction for a crime has been reversed, any order entered under the provisions of subsection (a) restraining the attorney from practicing law shall be vacated, any formal proceeding pursuant to subsection (c) of this rule shall be terminated, and any discipline imposed in such proceeding shall be vacated. The reversal of conviction shall not terminate or affect any formal proceeding previously or thereafter instituted founded upon alleged misconduct by the attorney, whether or not involving the same facts alleged to constitute the crime or offense for which the attorney's conviction was reversed.

RULE 11. RECIPROCAL DISCIPLINE

(a) All attorneys subject to these rules, shall, upon being subjected to professional disciplinary action in another jurisdiction, promptly inform the Chief Justice in writing of such action. Upon the receipt of such information the Chief Justice shall obtain a certified copy of such order. Monetary sanctions in particular cases for violations of procedural rules are not considered professional disciplinary actions.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice before the national courts of the Federated States of Micronesia has been disciplined in another jurisdiction, the Chief Justice shall forthwith issue a

notice directed to the attorney containing:

- (1) A copy of said order from the other jurisdiction, and
- (2) An order directing that the attorney inform the Chief Justice within thirty (30) days from service of the notice of any claim by the attorney that the imposition of the identical discipline by the Supreme Court would be unwarranted and the reasons therefor.

(c) Upon expiration of the thirty (30) days from the service of the notice issued pursuant to subsection (b) of this rule, the Chief Justice shall impose the identical discipline, unless the attorney requests a hearing. If a hearing is requested, the procedure designated In Rule 4 shall be followed. After the hearing, the same discipline imposed In the other jurisdiction shall be imposed unless the respondent attorney clearly demonstrates:

- (1) That the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute deprivation of due
- (2) That there was such an infirmity of proof in establishing the conduct as to give rise to the clear conviction that the other jurisdiction's conclusion should not be accepted as final on that subject, or
- (3) That the misconduct established clearly warrants substantially different discipline in this jurisdictions, or
- (4) That the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction.

Where the reviewing justice determines any of these elements to exist the justice shall enter such other' order as the justice deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purpose of a disciplinary proceeding in this jurisdiction.

RULE 12. DISBARRED OR SUSPENDED ATTORNEYS

(a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, including litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise the clients to seek legal assistance elsewhere. With regard to pending Litigation or administrative proceedings, the notice given the client shall also advise the client of the desirability of prompt substitution by other counsel, and notice shall be given to counsel for all adverse parties and shall state the address or place of residence of the client of the disbarred or suspended attorney.

(b) In the event that the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move, in the court or agency in which the proceeding is pending, for leave to withdraw.

(c) Orders imposing suspension or disbarment shall be effective thirty (30) days after entry by the Chief Clerk of the Supreme Court. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainers or engage as an attorney for another In any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date, the disbarred or suspended attorney may wind up and complete on behalf of any client all matters which are pending on the order's entry date.

(d) Within ten (10) days after the effective date of the disbarment or

suspension order, the disbarred or suspended attorney shall file with the Chief Clerk of the Supreme Court an affidavit showing:

(1) Compliance with the provisions of the disbarment or suspension order and with these rules, and

(2) Notification of the disciplinary action to all other jurisdictions in which the attorney is admitted to practice as may be required by the rules of such jurisdiction(s).

(3) The residence or other address of the disbarred or suspended attorney where communications may thereafter be directed.

(e) The Chief Justice shall cause a notice of the suspension or disbarment to be published in one or more newspapers of general circulation in the Federated States of Micronesia.

(f) The Chief Justice shall promptly transmit a certified copy of the order of suspension or disbarment to all judges of the national courts and to all administrative agencies of the national government and shall make such further orders as deemed necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken in compliance with these rules so that, upon any subsequent proceedings taken by or against the attorney, proof of compliance with these rules and with the disbarment or suspension order shall be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

RULE 13. REINSTATEMENT

(a) No suspended or disbarred attorney may resume practice until reinstated by order of the Supreme Court.

(b) Any person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of, at least five (5) years from the effective date of the disbarment. Any attorney suspended from practicing may not apply for reinstatement until the expiration of the period of suspension.

(c) Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Chief Clerk of the Supreme Court. The Chief Justice shall designate a justice of the Supreme Court who shall set the matter for hearing within thirty (30) days. At such hearing, the petitioner shall have the burden of demonstrating that the petitioner is qualified to practice law before the Supreme Court and worthy of the court's trust and confidence. At the conclusion of the hearing, the hearing justice shall enter an appropriate order within fifteen (15) days.

(d) The hearing justice may direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the petitioner.

(e) The hearing justice may direct that the attorney complete the bar examination process again.

RULE 14. UNAUTHORIZED PRACTICE OF LAW

Any attorney or person who practices law before the national courts of the Federated States of Micronesia without being admitted to the practice of law by the Supreme Court, or any attorney who practices law before the national courts after being disbarred or suspended shall be held in contempt of court and subject to the sanctions pertaining thereto.

RULE 15. EFFECTIVE DATE

These disciplinary rules and procedures supersede any existing rules and procedures for attorneys admitted to the Supreme Court, provided that these rules do not apply to disciplinary matters docketed before the Supreme Court on the effective date of these rules.

These disciplinary rules and procedures shall take effect on October 1, 1996.