

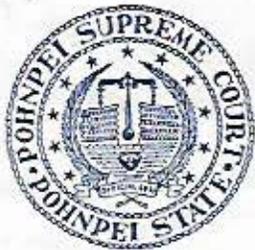
ATTORNEY/TRIAL COUNSELORS DISCIPLINARY RULES

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PRESCRIBED/ORDERED June 15, 1977



POHNPEI SUPREME COURT

THE STATE OF POHNPEI

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DISCIPLINARY RULES AND PROCEDURES FOR
ATTORNEYS AND TRIAL COUNSELORS PRACTICING
IN THE POHNPEI STATE SUPREME COURT

These Rules and Procedures are promulgated in accordance with the rule-making power granted to the Pohnpei Supreme Court by Section 10 of Article 10 of the Pohnpei State Constitution, to be effective on June 15, 1997; provided however, that the procedures set forth herein shall be applied to all disciplinary actions now pending or hereafter initiated.

RULE 1. JURISDICTION.

Any attorney or trial counselor admitted to practice law in Pohnpei State, and any attorney, trial counselor or law student, or other person specially admitted by a court of the State of Pohnpei for a particular proceeding, or any person practicing law in this State, is subject to the exclusive jurisdiction of the Pohnpei State Supreme Court. Nothing herein contained shall be construed to deny any Court of Pohnpei State such powers as are necessary for that Court to maintain control over proceedings conducted before it, such as the power of contempt.

For the sake of brevity, and for the purposes of these

rules only, the term "attorneys" as used in these disciplinary rules, shall mean lawyers and trial counselors or any other persons specially admitted to practice before the Courts of the State of Pohnpei.

RULE 2. GROUND FOR DISCIPLINE.

An attorney may be subject to disciplinary action as set forth in these rules for any of the following causes occurring within or outside Pohnpei State:

- a. The commission of an act involving moral turpitude, dishonesty, or corruption, whether the same is committed in the course of his or her conduct as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence at a disciplinary hearing of his or her violation of the statute upon which it is based. A disciplinary hearing, as provided in Rule 14 of these rules, shall be had to determine:

- (1) whether moral turpitude was in fact an element of the crime committed by the respondent attorney; and
- (2) the disciplinary action recommended to result therefrom;

- b. Willful disobedience or violation of a lawful court order directing him or her to do or cease doing an act which he or she ought in good faith do or forbear;
- c. Violation of his or her oath or duties as an attorney;
- d. Willfully appearing without authority as an attorney for a party to an action or proceeding;
- e. misrepresentation or concealment of a material fact made in his or her application for admission to the bar or reinstatement or in support thereof;
- f. Suspension, disbarment, or other disciplinary sanction by a court of the Federated States of Micronesia or a state thereof, or by any competent authority in any state, federal or foreign jurisdiction;
- g. Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or

suspended attorney, or with any person not authorized to practice law; or

- h. Any action or omission by an attorney which violates the Code of Professional Responsibility of the profession as adopted by the American Bar Association.

RULE 3. TYPES OF DISCIPLINE.

Discipline may consist of:

- a. Disbarment by the Pohnpei Supreme Court;
- b. suspension by the Pohnpei Supreme Court for a period not exceeding five (5) years;
- c. Public censure by the Pohnpei Supreme Court;
- d. Private reprimand by the Pohnpei Supreme Court;
- e. Restitution to injured parties;
- f. Costs of proceedings; or
- g. Traditional apology.

RULE 4. COMPLAINTS.

- a. Charges of professional misconduct may be initiated by any justice of the Pohnpei 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. The report of the investigation shall include copies of statements of witnesses, all documentary evidence relative to the complaint and a summary of the findings of the investigation, but shall not include recommended disciplinary action.

- 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 thereto. The Disciplinary Counsel shall investigate to the extent necessary the allegations of the complaint, and shall submit within thirty (30) days a written report of findings and recommendation to the reviewing Justice. An extension of time for filing the report may be granted for good cause shown. No report shall be submitted until the respondent

attorney has had an opportunity to submit to the Disciplinary Counsel an answer and any evidence or statements relevant to the complaint. Such evidence or statements shall be attached to the investigation report. The respondent attorney shall serve his answer upon the Disciplinary Counsel and file the original with the Court within twenty (20) days after service of the complaint, unless such time is extended by the Court. In the event the respondent attorney fails to answer, the charges shall be deemed admitted.

- 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 fifteen (15) days of receipt of the complaint whether:

- (1) the complaint should be ~~be~~ processed as set forth in sub-section b of this rule;

(2) the processing of the complaint should be deferred pending resolution of the matter from which it 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. INVESTIGATION REPORT DISPOSITION.

- a. If after a review of the report of the investigation conducted in accordance with Rule 4, the reviewing Justice determines the complaint is unfounded or of a trivial nature, he may make such disposition of the complaint as warranted by the circumstances.
- b. If after a review of the report of investigation conducted in accordance with Rule 4, the reviewing Justice determines the matter warrants further consideration, the reviewing Justice shall set the matter for hearing.
- c. The reviewing Justice shall cause notice of the time and place of the hearing to be given to the respondent attorney at least ten (10) days prior thereto. The hearing will be conducted not earlier

than thirty (30) days or later than ninety (90) days after service of the complaint, unless delayed for good cause.

- d. All disciplinary hearings shall be held in the State of Pohnpei as may be directed by the reviewing Justice.
- e. Unless a public hearing is requested by the respondent attorney at least five (5) days prior to the hearing, a hearing of a disciplinary matter before the reviewing Justice shall not be public.
- f. At every hearing, the respondent attorney shall have full opportunity to cross-examine all witnesses presented by the disciplinary Counsel and to present witnesses on his own behalf. The reviewing Justice shall not be bound by the formal Rules of Evidence, but shall admit only trustworthy evidence. The standard of proof for establishing allegations of misconduct shall be clear and convincing evidence.
- g. Within twenty (20) days after the hearing, the reviewing Justice shall enter the findings and the disciplinary action to be taken.
- h. The decision of the reviewing Justice may be appealed to the Appellate Division of the Supreme Court within the time period allowed by the Rules of Appellate Procedure of the Pohnpei State Supreme Court.

RULE 6. REFUSAL OF COMPLAINANT TO PROCEED OR COMPROMISE.

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

RULE 7. MATTERS INVOLVING RELATED PENDING CIVIL OR CRIMINAL LITIGATION

- a. Processing of complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigations, unless ordered by the Chief Justice in his discretion for good cause shown. Where a case has been assigned by the Chief Justice, a motion to defer or to abate the processing of the complaint shall be assigned to the reviewing Justice.
- b. The acquittal of an attorney on criminal charges, or a verdict or judgment in his favor in civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary action predicated on the same material allegations.

RULE 8. SERVICE.

- a. Service upon the respondent of the complaint ~~is~~ any disciplinary proceeding shall ~~be~~ made by personal service by a person authorized by the ~~by the~~ reviewing Justice, except in the event the

respondent cannot be found within the State of Pohnpei or has departed therefrom, service may be made by registered or certified mail at his address shown in his admission papers or other last known address.

- b. Service of any other papers or notices required by these rules shall be made in accordance with the Pohnpei Rules of Civil Procedure.

RULE 9. SUBPOENA POWER, WITNESSES.

- a. Upon application of the Disciplinary Counsel, the respondent attorney, or by order of the Court, the Clerk of Courts shall 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. There shall be no discovery proceedings except upon the order of the reviewing Justice.

RULE 10. ATTORNEYS CONVICTED OF CRIMES.

- a. Upon the filing with the Chief Justice of a certificate of a Clerk of Courts demonstrating that an attorney has been convicted of a crime which is, or if it had been committed in the State of Pohnpei, would have been a felony or which involves fraud, dishonesty, corruption, or false statement, the Chief justice shall commence a disciplinary proceeding as provided in Rule 3. Pending final

disposition of the disciplinary proceeding 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 for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the respondent attorney based upon the conviction. For the purpose of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted.
- c. Upon receipt of a certificate of conviction of an attorney of a crime described in a above, even if the attorney is not restrained from the practice of law, the Chief Justice shall refer to a reviewing Justice as provided in Rule 4b, and the reviewing Justice shall institute a hearing as provided in Rule 4, in which the sole issue to be determined shall be the extent of the discipline to be imposed, provided the proceedings so instituted shall not be brought to hearing until the judgment of conviction is final, unless the respondent attorney otherwise requests.

- d. Immediately upon the filing with the Chief Justice or the reviewing Justice, a certificate demonstrating that the underlying conviction for a crime has been reversed, any order entered under provisions of a above, restraining the attorney formal proceeding then pending against the attorney founded solely upon such conviction shall be terminated, and any discipline imposed in such formal proceeding shall be vacated, but the reversal of conviction shall not terminate or instituted founded upon alleged misconduct by the attorney, whether or not involving the same facts alleged to constitute a crime or offense of which the attorney was convicted.

RULE 11. RECIPROCAL DISCIPLINE.

- a. All attorneys, subject to the provisions of these rules, shall upon being subjected to professional disciplinary action in another jurisdiction, promptly inform the Chief Justice of such action. Upon being informed that an attorney, subject to the provisions of these rules, has been subjected to discipline in another jurisdiction, the Chief Justice shall obtain a certified copy of such disciplinary order.
- b. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in the State of Pohnpei 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 in the State of Pohnpei be unwarranted and the reasons therefor.

c. Upon the expiration of the thirty (30) days from the service of the notice issued pursuant to the provisions of b above, the Chief Justice shall impose the identical discipline, unless the attorney requests a hearing. If a hearing is requested, the ~~p/~~procedure designated in Rule 4 shall be followed. The reviewing Justice shall impose the same discipline unless it clearly appears in the record upon which the discipline predicated is:

- (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;
- (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the

reviewing Justice could not, consistent with the Justice's duties, accept as final the conclusion on that subject;

- (3) that the misconduct established warrants substantially different discipline in the State of Pohnpei; or
- (4) that the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction.

Where the reviewing Justice determines that any of the said elements exists, 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 the State of Pohnpei.

RULE 12. DISBARRED OR SUSPENDED ATTORNEY.

- 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, such notice to be given to the client shall also advise the client of the desirability of prompt substitution of another attorney or attorneys in his place and notice shall be given to the attorney or attorneys for any adverse party and shall state the place of residence of the client of the disbarred or suspended attorney.

- b. In the event the client does not obtain subsequent 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 disbarment or suspension shall be effective thirty (30) days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer 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, he may wind up and complete on behalf of any client all matters which were pending on the 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 this Court an affidavit showing:

(1) that he has complied with the provisions of the order and with these rules;

(2) that he has notified all other states, territorial, federal and administrative jurisdictions to which he is admitted to practice of the disciplinary action. Such affidavit shall also set forth 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 disbarment or suspension to be published.
- f. The Chief Justice shall promptly transmit a certified copy of the order of disbarment or suspension to all judges within the Federated States of Micronesia and the administrative agencies therein, and shall make such further orders as deemed necessary to fully protect the rights of the clients of the disbarred or suspended attorney
- g. A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these rules, so that, upon any subsequent proceedings instituted by or against him, proof of compliance with these rules and with disbarment

or suspension orders will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

RULE 13. REINSTATEMENT

a. No disbarred or suspended attorney may resume practice until reinstated by order of the Pohnpei 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 three (3) years from the effective date of disbarment. An attorney suspended from practice may not apply for reinstatement until the expiration of at least one-half of the period of suspension.

c. Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Chief Justice. Upon receipt of the petition, the Chief Justice shall set the matter for hearing before the Pohnpei Supreme Court. At such hearing, the petitioner shall have the burden of demonstrating that the petitioner is qualified to practice law in the State of Pohnpei, and is worthy of the Court's trust and confidence. At the conclusion of the hearing, the Court shall promptly enter an appropriate order.

d. The Court shall direct the necessary expenses incurred in an investigation and processing of a petition for reinstatement to be paid by the petitioner.

RULE 14. CUMULATIVE VIOLATIONS.

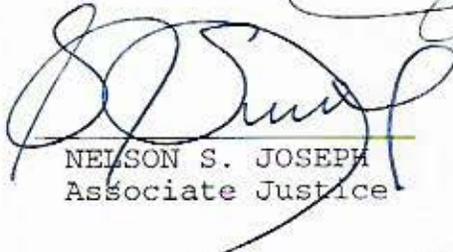
An attorney disciplined after the effective date of these rules who has a record of:

- a. three or more censures and/or reprimands, or
- b. any combination of a disbarment or suspension, plus one or more censures or reprimands, shall be subject to suspension from the practice of law.

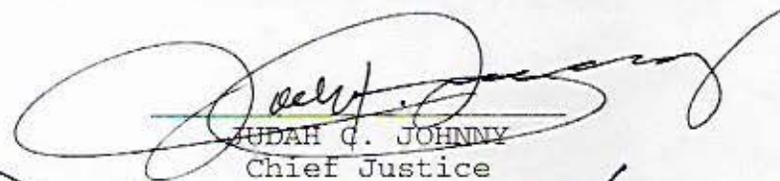
RULE 15. UNAUTHORIZED PRACTICE OF LAW.

Any attorney or person who practices law in the State of Pohnpei without being admitted to the practice of law by the Pohnpei Supreme Court, or any attorney who practices law before the Pohnpei State courts after being disbarred or suspended shall be ordered to desist from practice. If such person does not desist from practice, that person shall be held in contempt of court and subject to the sanctions pertaining thereto.

It is PRESCRIBED and ORDERED this 15 day of June, 1997.



NELSON S. JOSEPH
Associate Justice



JUDAH C. JOHNNY
Chief Justice



HENRY BIZA
Associate Justice



IOANIS KANICHY
Associate Justice