

RULES OF THE STATE BAR OF YAP

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RULES OF THE STATE BAR OF YAP¹

Statement of Purpose and Policy

The purpose of these rules is twofold: to regulate the practice of law for the benefit of the people of the State of Yap and to promote the development of an informed, stable and responsible legal profession in this state.

These rules are based upon the following principal findings:

- (1) The practice of law is a function of vital importance to the people of this State; a competent and honest legal profession is essential to the orderly and efficient administration of justice and the conduct of both public and private affairs; and
- (2) The legal needs of public agencies and private citizens in this state differ in significant ways from those in other jurisdictions; and
- (3) There is at the present time a serious shortage in the number of attorneys in this state and that shortage is likely to exist for some time; and
- (4) It is in the best interest of the people of this state for this Court to encourage citizens of the state to choose a career in law, to obtain a formal legal education and return to serve in public and private capacities in the legal profession; and
- (5) In light of the great need for legal services and the limited availability of attorneys, it will be necessary to make special provisions for admission to the State Bar of Yap of some non-lawyers and of some attorneys from elsewhere who are employed by a public or quasi-public agency within the state; these special provisions should be temporary in nature and should be considered to be an unavoidable exception to the necessity of establishing and maintaining a legal profession which is an integral part of the society of this state; and
- (6) It is essential to the maintenance of high standards of competence and responsibility and to the prompt and efficient administration of justice that all members of the legal profession be actual residents or citizens of this state; and
- (7) The people of this state will be best served by a legal profession which consists of practitioners, with proven good moral character, who are members of this society, whether by birth or by choice, and who are committed to faithful and diligent service in the high calling of attorney or counselor at law.

Rule 1. Establishment of State Bar

The State Bar of Yap is hereby established.

Rule 2. Authority of State Court

The State Court has the primary responsibility for defining and regulating the practice of law in this state, in conjunction with any appropriate state statutes, and shall do so by the promulgation of rules governing admission to the bar and the conduct of persons authorized to practice law.

Rule 3. Membership and Annual Dues Required²

- (a) Membership. No person shall practice law in this state unless he or she is a member in good standing of the State Bar of Yap, except as provided in Rule 14.

(b) Annual Dues. Each member of the Yap State Bar must pay an annual fee in order to keep his membership status current. The annual fee will be payable by the fifteenth day of April of each year. The annual fee will be \$10 for all trial counselors and \$20 for all lawyers and Court officials. Trial counselors and attorneys who have been newly admitted to the Bar shall receive a waiver of the annual fee up to and including the first anniversary of their admission. Thereafter, they shall pay the annual fee on each successive April 15, as provided in the Section.

Rule 4. Admission of Members of Trust Territory and Supreme Court of the Federated State Bars

(a) High Court or FSM Supreme Court License. Any person who was admitted to practice before the High Court of the Trust Territory of the Pacific Islands or Supreme Court of Federated States on or before March 9, 1982, and is currently a member in good standing, is eligible for admission to the State Bar of Yap, provided that he or she is a resident or domiciliary of the State of Yap.

(b) Application and Fee. An application for admission under this rule shall be submitted to the State Court not later than May 1, 1983, in a form prescribed by the Court, and shall be accompanied by payment of a fee of twenty-five dollars (\$25.00).

(c) Scope of Practice. An applicant admitted under this rule will be authorized to practice law in the State of Yap on the same basis and to the same extent as he or she was authorized to practice before the High Court of the Trust Territory.

Rule 5. Qualifications and Applications for Admission

(a) Qualifications. Except as otherwise provided in these rules, a person is eligible for membership in the State Bar of Yap if he or she possesses the following qualifications:

(1) Law School Diploma. The applicant shall be a graduate of a school of law which is accredited in the jurisdiction where the school is situated, except as provided in Rule 6, and

(2) Good Moral Character. The applicant shall be a person of good moral character and shall be fit to undertake the responsibilities of the practice of law, and

(3) No Criminal Convictions. The applicant shall not have been convicted of any crime involving moral turpitude, and

(4) Bar Examinations. The applicant shall successfully complete a general examination of his or her knowledge of the statutory and customary law of the State of Yap, except as provided in Rule 7, 8 or 9, and

(5) Residence or Domicile. The applicant shall be an actual resident or a domiciliary of the State of Yap, or shall have stated an intent to reside or to maintain a full-time law office in this state.

(b) Application. An applicant shall apply for admission and shall present satisfactory evidence of possession of the qualifications stated in subsection (a), in the manner prescribed by the State Court.

(c) Fee. The application for admission shall be accompanied by payment of fee of twenty-five dollars (\$25.00).

(d) Effective Date. This rule shall govern all applications for admission from and after March 9, 1982, except for applications submitted pursuant to Rule 4.

Rule 6. Admission Without Law School Diploma

An applicant for admission who is otherwise qualified under Rule 5 may satisfy the requirement of a law school diploma prescribed by Rule 5(a)(1) by passing all courses approved by the State Bar and being certified by the Chief Justice of the State Court that he is qualified to practice law in the State. Courses are approved by the members of the State Bar present at a bar association meeting through consensus or, if necessary, majority vote.³

Rule 7. Admission Without Examination – Public Service

(a) Persons Excused. An applicant who is otherwise qualified for admission under Rule 5 is excused from taking the examination prescribed by Rule 5(a)(4) if he or she is a member of one of the following special classes of person:

- (1) State Employees. Attorneys employed by the State of Yap or one of its branches, agencies or instrumentalities; or
- (2) Federal Employees. Attorneys employed by the Federated States of Micronesia to reside and work in this state; or
- (3) Legal Services Employees. Attorneys employed by the Micronesian Legal Service Corporation, or

(b) Required License. An applicant seeking admission under this rule must be a member in good standing of the bar of one of the several states of the United States, one of the states of the Federated States of Micronesia, or the Supreme Court of the Federated States of Micronesia.

Rule 8. Admission Without Examination – Attorneys from Another Jurisdiction

An applicant who is otherwise qualified for admission under Rule 5 is excused from taking the examination required by Rule 5(a)(4) if he or she satisfies the following requirements:

- (a) Required License. The applicant must be a member in good standing of the bar of one of the states of the Federated States of Micronesia, Supreme Court of the Federated States, a state, territory, or commonwealth of the United States, the Republic of Belau, or the Marshall Islands; and
- (b) Required Experience. The applicant must have been a member of the bar of his or her home jurisdiction for a period of at least two years prior to admission to the State Bar; and
- (c) Reciprocity. The home jurisdiction of the applicant must permit members of the State Bar of Yap to be admitted to practice upon terms at least as favorable as those set forth in this rule.

Rule 9. Admission Without Examination – Citizens of the State of Yap

In order to encourage natural born or adopted citizens of the State of Yap to pursue a career in law, any Yapese citizen who is otherwise qualified for admission under Rule 5, shall be admitted without the necessity of taking the examination required by Rule 5(a)(4).

Rule 10. Bar Examining Committee

(a) General Examination and Frequency. The State Bar Examining Committee shall develop and administer the general examination required by Rule 5(a)(4) in a manner which fairly measures the relevant knowledge of the applicant. The examination may be written, or oral, or both. The examination shall be administered to applicants on Thursdays of the second week of August and March, and any other times determined by the court.

(b) State Bar Examining Committee. A State Bar Examining Committee is hereby established. The Chief Justice of the State Court is authorized to appoint five (5) members, in good standing, of the Bar to sit as members of this committee.

(1) Examination. The committee shall develop, write, and correct all General and Special Bar examinations.

(2) Power. The committee shall have power to examine all applicants for admission to practice law and to administer the requirements for admission to practice. The committee shall certify to the State Court for admission to practice law those persons, and only those persons who fulfill the requirements for admission to practice law provided in the Rules of the State Bar of Yap.

(3) Meetings. Meetings of the committee may be held at such place in the state and at such time as may be fixed by the committee. Notice of the time and place of all meetings shall be given at least one day prior, thereto, and such notice may be given by mail, or orally or by telephone.

(4) Quorum. Three members shall constitute a quorum of the committee for the transaction of business, except that less than five (5) members may adjourn from day to day.

(5) Subcommittee. The committee may act in any matter by a subcommittee composed of not less than two committee members, subject to the right of an applicant, upon written application filed within ten (10) days after being notified of any determination made by such a subcommittee, to have the same reviewed and determined by the committee.

(6) Investigations. In the conduct of investigations and upon the hearing of all matters, the committee, or any subcommittee, having jurisdiction may:

(A) Take and hear relevant evidence.

(B) Compel, by subpoena, the attendance of witnesses and the production of relevant books, papers, and documents.

(7) Oath. Any member of the committee, or of any subcommittee, having jurisdiction, may administer oaths and issue subpoenas. Depositions may be taken and used in the same manner as in civil cases.

(8) Contempt. Whenever any person subpoenaed to appear and give testimony or to produce relevant tangible information refuses to appear or testify before the committee, or a subcommittee, or to answer any pertinent and proper question, he is in contempt of the committee. The chairperson, or presiding member, of the committee shall report the fact that a person under subpoena is in contempt of the committee to the state court for so refusing to appear or testify as are provided by law.

(9) Notice. Notice, either oral or written, shall be given to an applicant of any determination affecting him; and notice to appear before the committee or a subcommittee shall be given, in a similar manner, to an applicant at least five (5) days prior to the time fixed therein for his appearance.

(10) Review. After registration either as a “general applicant” or as a “special applicant”, any person refused certification to the State Court for admission to practice may have the action of the committee reviewed by, the State Court.

(11) Committee. The committee is empowered to appoint such committee in furtherance of the purposes of this Rule and to facilitate their administration as may be necessary or advisable.

(12) Tenure of Office of Committee. For the purpose of continuity two members of the State Bar Examining Committee shall serve for a period of one year, another two members for a period of two years, and the remaining member for a period of three years.

(c) Investigation and Cost. In its discretion, the Court may require an independent investigation of any pending application and may charge the cost of such investigation to the applicant.

Rule 11. Admissions Pro Hac Vice

(a) Appearance Permitted. An attorney who is a member of the bar of any other jurisdiction may be permitted to appear in the State Court in any proceeding for which the attorney has been engaged by one of the parties to the action.

(b) Duration. An admission under this rule shall be valid only for the appearance or proceeding for which it is granted.

(c) Association Required. An attorney seeking admission under this Rule shall be associated with a member of the State Bar of Yap, who shall be the attorney of record. The Court may, in its discretion, waive the requirement of this section.

Rule 12. Oath

(a) Content of Oath. Every applicant who is found by the Court to be qualified for admission to the State Bar of Yap, shall appear in open court and take an oath or affirmation in the following form:

“I, [name of applicant], hereby solemnly swear [or affirm] that I will uphold the Charter [or Constitution] and laws of the State of Yap; that I will represent my client to the utmost of my ability; that I will faithfully abide by the Code of Professional Responsibility; and that I will at all times conduct myself in a manner to uphold the dignity of this Court and the honor of the legal profession.”

(b) Enrollment. Upon the taking of the oath, the applicant shall be enrolled as a member of the State Bar of Yap.

(c) Pro Hac Vice Admissions. An attorney who is admitted pro hac vice, under Rule 11, shall take the oath prescribed by subsection (a) of this rule, but shall not be enrolled as a member of the State Bar.

Rule 13. Code of Professional Responsibility

(a) Observance Required. Every member of the State Bar of Yap shall conduct himself or herself in a manner consistent with the Code of Professional Responsibility as promulgated by the American Bar Association.

(b) Discipline or Disbarment. A member of the State Bar shall be subject to discipline or disbarment by the Court for violation of the Code of Professional Responsibility according to the written procedures that the Court establishes for that purpose.⁴

Rule 14. Scope of Applicability – Municipal

These rules shall not apply to appearances before the municipal courts nor to the practice of law in connection therewith.

Rule 15. Title

These rules shall be known and cited as the Rules of the State Bar of Yap. The form for an abbreviated citation shall be Rule _____, R.S.B.

Notes on the Rules of the State Bar of Yap

¹ General Court Order 1982-1 approved the Rules of the State Bar. The Rules of the State Bar became effective on March 8, 1982.

² As amended by GCO 1990-1. In its original form, Rule 3 contained only the language found in now subsection (a) but did not contain any information regarding annual dues. General Court Order 1990-1 added subsection (b) and its language on annual dues, while also keeping Rule 3’s original language as subsection (a). General Court Order 1990-1 stated that “[t]he principal purpose of these amendments are to provide for an integrated bar association and to promulgate a rule governing payment of an annual bar membership fee.” The amended version of this Rule became effective on April 30, 1990.

³ As amended by GCO 2008-001. In its previous form, Rule 6 referenced courses that were “offered by the State Bar.” Because the State Bar does not regularly offer legal courses and because other entities, such as the College of Micronesia, are more equipped to do so, the Yap State Court issued General Court Order 2008-001 and changed “offered by the State Bar” to “approved by the State Bar.” Furthermore, General Court Order 2008-001 added the second sentence of Rule 6 to explain how courses are “approved” by the State Bar. (It appears that Rule 6 was amended once prior to GCO 2008-001, but the court’s records do not indicate when. The original version of Rule 6 was fairly lengthy and dealt with a “special examination” of the law of the State of Yap.)

⁴ As amended by GCO 2012-002. In its original form, Rule 13(b) stated simply, “A member of the State Bar shall be subject to discipline or disbarment by the Court for violation of the Code of Professional Responsibility.” General Court Order 2012-002 sought “to clarify the procedure by which the State Court of Yap may discipline counselors.” Accordingly, General Court Order 2012-002 added the phrase “according to the written procedures that the Court establishes for that purpose” to the end of the sentence. General Court Order 2012-003 was adopted the same day, May 20, 2012, and spelled out the counselor disciplinary procedures referenced in Rule 13(b). The original disciplinary rules were then significantly amended by General Court Order 2013-002, which became effective on June 20, 2013.

YAP STATE BAR ASSOCIATION ETHICS COMPLAINT PROCEDURE RULES¹

Rule 1. Initiating a Complaint

Any person or entity may initiate an ethics investigation against a counselor by filing a Yap State Bar Association Counselor Grievance Form with the clerk's office of the Yap State Court. The Grievance Form is available at the Yap State Court clerk's office.²

Rule 2. Commencement of Disciplinary Proceedings

- (a) Upon receipt of a grievance form, the Chief Justice of the Yap State Court or, in the case of a conflict of interest, an Associate Justice, shall, without unnecessary delay, evaluate the complaint and decide whether to further investigate it.
- (b) If the Chief Justice or Associate Justice finds that the complaint should be further investigated, he or she shall, without unnecessary delay, appoint one member of the Yap State Bar Association as Disciplinary Counsel to investigate the complaint. The Disciplinary Counsel shall represent the interests of the Yap State Bar Association. In no event shall an employee of the Yap State Court be appointed as Disciplinary Counsel.
- (c) After the Chief Justice has selected the Disciplinary Counsel, the Disciplinary Counsel shall, within 5 days of his or her selection, send a notice to the counselor under investigation that details the complaint and explains that an investigation is underway. The notice must also state that the counselor under investigation is permitted, on his or her behalf, to submit to the Disciplinary Counsel evidence and argument relative to the allegations in the complaint within five days of receipt of the notice.
- (d) The Disciplinary Counsel shall investigate to the extent necessary the allegations of the complaint and shall submit within 30 days of his or her selection a written report of findings and recommendations to the reviewing justice. An extension of time for filing the report may be granted only for good cause shown.

Rule 3. Review by Justice

- (a) Upon receipt of the Disciplinary Counsel's report, the reviewing justice shall, within ten days, determine what course of action to take.
- (b) If the report concludes that the allegations of the complaint are unfounded or otherwise lacking in merit, and the justice agrees with the report's conclusion, then the justice shall dismiss the complaint and notify the counselor who was under investigation.
- (c) If the report recommends disciplinary action or if the reviewing justice finds that the report justifies the taking of evidence and the finding of further facts, the justice shall set the matter for a hearing.
- (d) Prior to the hearing, the Disciplinary Counsel and the counselor under investigation shall have a right to subpoena witnesses and compel discovery.
- (e) Within ten days of the conclusion of the hearing, the justice shall (1) dismiss the complaint; (2) censure, suspend, or disbar the counselor under investigation in a written decision; or (3) inform the parties that more time is needed to render judgment. Any written decision must state findings of fact, conclusions of law,

the ethical rule violated, and the disciplinary action against the counselor in plain language. In the event that more time is needed, the reviewing justice is allowed no more than a ten-day extension from when the written decision was originally due.

Rule 4. Appeal and Reinstatement

(a) A counselor who has been disciplined may pursue an appeal or reinstatement, or both.

(b) The procedures for appealing a disciplinary decision are as follows:

(1) The counselor disciplined may appeal the decision by filing a statement of appeal with the clerk of the Yap State Court within 20 days of receiving the disciplinary decision. The statement of appeal shall identify the points that were improperly considered by the reviewing justice and shall provide reasons under law, evidence, or custom and tradition that support the contention that the decision was wrong. The counselor disciplined may ask for a stay of the disciplinary punishment, but the request must be made in conjunction with the statement of appeal. Upon receiving the statement of appeal, the clerk shall assign the case to a justice other than the justice who issued the disciplinary decision. The clerk shall serve a copy on the Disciplinary Counsel who submitted the report in the case.

(2) Within 10 calendar days of receiving the statement of appeal from the clerk, the Disciplinary Counsel may file a counter statement with the clerk to explain why the disciplinary decision was correct. If a counter statement is filed, the clerk shall serve a copy on the appealing counselor.

(3) The clerk of the Yap State Court shall schedule the appeal for a hearing or a status conference within ten (10) days from when the counter statement is due.

(4) The assigned justice shall give both the counselor appealing the disciplinary decision and the Disciplinary Counsel an opportunity to speak at the hearing.

(5) The standard of review for all appeal is as follows: findings of fact from the written decision are reviewed for clear error, and conclusions of law are reviewed de novo.

(6) Within ten days of the conclusion of the hearing, the justice shall issue an appellate decision explaining why the earlier ethics decision is or is not modified or shall inform the parties that more time is needed to render judgment. In the event that more time is needed, the justice is allowed no more than a ten-day extension from when the appellate decision was originally due.

(c) The procedures for petition for reinstatement are as follows:

(1) A counselor who has been suspended may petition the Yap State Court for reinstatement at the end of his or her suspension. A counselor who has been disbarred may apply for reinstatement after one year from the effective date of disbarment.

- (2) The clerk of the Yap State Court shall serve a copy of the petition to the Disciplinary Counsel who submitted the report in the case. The Disciplinary Counsel may file a response to the petition within 10 days but is not required to do so.
- (3) A petition for reinstatement shall be set for a hearing, and the clerk shall give notice of the hearing to both the counselor petitioning for reinstatement and the Disciplinary Counsel. At the hearing, the counselor petitioning for reinstatement has the burden of demonstrating that (1) he or she desires in good faith to obtain restoration of his or her privilege to practice law; (2) that he or she has not practiced law in the State of Yap or attempted to do so since he or she was disciplined; (3) that his or her attitude towards the misconduct for which he or she was disciplined was one of genuine remorse; and (4) he or she is qualified to practice law before the Yap State Court and is worthy of the public's trust and confidence.

Notes on the Yap State Bar Association Ethics Complaint Procedure Rules

¹ General Court Order 2012-003 “establish[ed] the procedure by which the State Court of Yap may discipline counselors” under Rule 13(b) of the Rules of the State Bar. The procedures took effect on March 20, 2012. Over a year later, on June 20, 2013, the Yap State Court issued General Court Order 2013-002, which made significant amendments to the original version of the ethics complaint procedure rules to improve the rules’ “efficiency and effectiveness.” The changes were significant, including, among other things, the addition of a reinstatement procedure and amendments to the commencement of disciplinary proceedings and the procedure for appeals.

² The Grievance form is provided in Appendix A.

APPENDIX A

**YAP STATE BAR ASSOCIATION
COUNSELOR GRIEVANCE COMPLAINT FORM**

Date: _____

INFORMATION

Your Name: _____

Address: _____

Telephone:

(Home) _____ (Office) _____

(Cell) _____

COUNSELOR COMPLAINED OF:

Name: _____

Address: _____

Telephone: _____

CONTACT WITH OTHER AGENCIES

Have you contacted any other agency, Attorney General's Office, concerning this matter?

If so, state the name of the agency:

What action was taken by the agency?

COURT ACTION TAKEN BY YOU AGAINST THE COUNSELOR

Have you taken any civil or criminal action against the attorney?

ALLEGATIONS

Explain your complaint against the counselor in as much detail as possible. If necessary, continue your narrative on a separate sheet of paper.

Please Sign Here

Date