



SUPREME COURT OF GUAM

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HON. KATHERINE A. MARAMAN
CHIEF JUSTICE

HANNAH G. ARROYO
CLERK OF COURT

November 15, 2019

To: All Guam Bar Association Members

Re: Notice of Opportunity to Comment on Proposed Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings (Amended November 15, 2019)

The proposed Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings (“Rules”) were originally distributed to the Guam Bar for comment on March 7, 2018. The Supreme Court, having considered comments received as well as the suggestions offered by the American Bar Association Standing Committee on Professional Regulation in its June 2019 report on Guam’s lawyer discipline system, now distributes the amended proposed Rules for review and comment. Comments will be received through December 15, 2019, and may be sent by email to Hannah G. Arroyo, Clerk of Court for the Supreme Court of Guam, at hgutierrezarroyo@guamsupremecourt.com or to the following address:

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**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(Draft Rules (November 15, 2019))

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

TABLE OF CONTENTS

| | |
|---|------|
| PREAMBLE | viii |
| I. STRUCTURE AND SCOPE | 1 |
| Rule 1. Comprehensive Lawyer Regulatory System. | 1 |
| Rule 2. Commission on Lawyer Regulation. | 1 |
| (a) Commission | |
| (b) Appointment | |
| (c) Quorum | |
| (d) Powers and Duties | |
| (e) Expenses | |
| (f) Abstention of Members | |
| Rule 3. Investigative Committee. | 3 |
| (a) Committee | |
| (b) Appointment | |
| (c) Quorum | |
| (d) Powers and Duties | |
| (e) Expenses | |
| (f) Abstention and Disqualification of Members | |
| Rule 4. Hearing Panel. | 5 |
| (a) Panel | |
| (b) Appointment | |
| (c) Quorum | |
| (d) Powers and Duties | |
| (e) Expenses | |
| (f) Abstention and Disqualification of Members | |
| Rule 5. Regulation Counsel. | 6 |
| (a) Appointment | |
| (b) Powers and Duties | |
| (c) Advisory Opinions Prohibited | |
| (d) Ex Parte Communication with Regulation Counsel | |
| (e) Disqualification | |
| (f) Budget | |
| Rule 6. Expenses. | 9 |
| Rule 7. Jurisdiction. | 9 |
| (a) Lawyers Admitted to Practice | |
| (b) Incumbent Judges | |
| (c) Former Judges | |
| (d) Powers Not Assumed | |
| Rule 8. Periodic Assessment of Lawyers; Registration; Roster of Lawyers. | 10 |

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

| | |
|---|----|
| (a) Requirement | |
| (b) Exemption of Judges | |
| (c) Suspension for Nonpayment | |
| (d) Reinstatement after Payment | |
| (e) Registration Statement | |
| (f) Suspension for Failure to File Registration Statement | |
| (g) Notice of Transfer to Inactive Status | |
| (h) Reinstatement from Inactive Status | |
| (i) Resignation While in Good Standing | |
| (j) Roster of Lawyers | |
| (k) Temporary Bar Members | |
| Rule 9. Grounds for Discipline. | 13 |
| Rule 10. Sanctions. | 13 |
| (a) Types of Sanctions | |
| (b) Conditions | |
| (c) Factors to be Considered in Imposing Sanctions | |
| (d) Public Nature of Sanctions | |
| II. PROCEDURE FOR DISCIPLINARY PROCEEDINGS | 15 |
| Rule 11. Generally. | 15 |
| (a) Evaluation | |
| (b) Investigation | |
| (c) Private Admonition - Imposition | |
| (d) Formal Charges | |
| (e) Stipulations and Admissions | |
| (f) Review by the Court | |
| (g) Alternatives to Discipline Program | |
| Rule 12. Immunity; Laws Inapplicable. | 19 |
| (a) From Civil Suits | |
| (b) Laws Inapplicable | |
| Rule 13. Service. | 19 |
| (a) Service of Formal Charges or Petition | |
| (b) Service of Other Papers | |
| Rule 14. Subpoena Power. | 19 |
| (a) Oaths | |
| (b) Investigatory Subpoenas | |
| (c) Subpoenas for Deposition or Hearing | |
| (d) Enforcement of Subpoenas | |
| (e) Quashing Subpoena | |
| (f) Witnesses and Fees | |
| (g) Subpoena Pursuant to Law of Another Jurisdiction | |
| Rule 15. Discovery. | 20 |

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

- (a) Scope
- (b) Resolution of Disputes
- (c) Civil Rules Not Applicable

Rule 16. Access to Disciplinary Information..... 21

- (a) Availability of Information
- (b) Confidentiality
- (c) [Reserved]
- (d) Proceedings Alleging Disability
- (e) Protective Orders
- (f) Request for Nonpublic Information
- (g) Notice to Lawyer
- (h) Release Without Notice
- (i) Notice to National Lawyer Regulatory Data Bank
- (j) Duty of Officials and Employees

Rule 17. Dissemination of Disciplinary Information..... 22

- (a) Notice to Disciplinary Agencies
- (b) Public Notice of Discipline Imposed
- (c) Notice to the Courts

Rule 18. Additional Rules of Procedure..... 23

- (a) Nature of Proceedings
- (b) Proceedings Governed by Rules of Civil Procedure and Evidence
- (c) Standard of Proof
- (d) Burden of Proof
- (e) Hearings Recorded
- (f) Related Pending Litigation
- (g) Amendments
- (h) Delay Caused by Complainant
- (i) Effect of Time Limitations
- (j) Complaints Against Disciplinary Agency Members
- (j) Right of Appeal

Rule 19. Lawyers Found Guilty of a Crime..... 24

- (a) Transmittal of Proof of Determination of Guilt
- (b) Determination of “Serious Crime”
- (c) Definition of “Serious Crime”
- (d) Immediate Interim Suspension
- (e) Conviction as Conclusive Evidence
- (f) Automatic Reinstatement from Interim Suspension upon Reversal of Finding of Guilt or Conviction
- (g) Notice to Clients and Others on Interim Suspension

Rule 20. Interim Suspension for Threat of Harm..... 25

- (a) Transmittal of Evidence

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

| | |
|--|----|
| (b) Immediate Interim Suspension | |
| (c) Notice to Clients | |
| (d) Motion for Dissolution of Interim Suspension | |
| Rule 21. Discipline by Consent. | 26 |
| (a) Approval of Tendered Admission | |
| (b) [Reserved] | |
| (c) Discontinuance of Jurisdiction | |
| (d) Affidavit of Consent | |
| (e) Order of Discipline | |
| Rule 22. Reciprocal Discipline and Reciprocal Disability Inactive Status. | 27 |
| (a) Regulation Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction | |
| (b) Notice Served Upon Respondent | |
| (c) Effect of Stay in Other Jurisdiction | |
| (d) Discipline to be Imposed | |
| (e) Conclusiveness of Adjudication in Other Jurisdictions | |
| Rule 23. Proceeding in which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated. | 28 |
| (a) Involuntary Commitment or Adjudication of Incompetency | |
| (b) Inability to Properly Defend | |
| (c) Proceedings to Determine Incapacity | |
| (d) Public Notice of Transfer to Disability Inactive Status | |
| (e) Reinstatement from Disability Inactive Status | |
| Rule 24. Resignation by Lawyers Under Investigation or Subject to Formal Charges. | 30 |
| (a) Protection of Public | |
| (b) Sworn Statement | |
| (c) Procedure | |
| (d) Public Record | |
| (e) Continuing Jurisdiction over Resigned Lawyer | |
| (e) Reinstatement | |
| Rule 25. Reinstatement After Serving Suspension and Readmission. | 31 |
| (a) Generally | |
| (b) Petition | |
| (c) Service of Petition | |
| (d) Publication of Notice of Petition | |
| (e) Criteria for Reinstatement and Readmission | |
| (f) Review of Petition | |
| (g) Hearing; Report | |
| (h) Decision as to Reinstatement or Readmission | |
| (i) Conditions of Reinstatement or Readmission | |
| (j) Reciprocal Reinstatement or Readmission | |
| (k) Waiver of Psychotherapist-Patient Privilege | |

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

| | |
|--|----|
| Rule 26. Abatement or Modification of Conditions of Discipline, Reinstatement, or Readmission. | 33 |
| Rule 27. Notice to Clients, Adverse Parties, and Other Counsel. | 34 |
| (a) Recipients of Notice; Contents | |
| (b) Special Notice | |
| (c) Duty to Maintain Records | |
| (d) Return of Client Property | |
| (e) Effective Date of Order; Refund of Fees | |
| (f) Withdrawal from Representation | |
| (g) New Representation Prohibited | |
| (h) Affidavit Filed with Court | |
| Rule 27.1. Employment of Disbarred, Suspended, Resigned, or Involuntary Inactive Lawyer. | 35 |
| Rule 28. Appointment of Counsel to Protect Clients’ Interests when Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies. | 36 |
| (a) Inventory of Lawyer Files | |
| (b) Protection for Records Subject to Inventory | |
| Rule 29. [RESERVED]. | 37 |
| Rule 30. Maintenance of Trust Funds in an Insured Financial Institution; Overdraft Notification; Verification of Bank Accounts. | 37 |
| (a) Clearly Identified Trust Accounts in an Insured Financial Institution Required | |
| (b) Generally | |
| (c) Confidentiality | |
| Rule 31. [RESERVED] | 37 |
| Rule 32. Statute of Limitations. | 37 |
| Rule 33. Failure to Answer/Failure to Appear. | 38 |
| (a) Failure to Answer | |
| (b) Failure to Appear | |
| Rule 34. The Court hereby adopts the <i>ABA Standards for Imposing Lawyer Sanctions</i>, as approved February 1986, and as amended February 1992, and attached hereto as Appendix 1. | 38 |

Note: The primary source for these rules was the American Bar Association’s (ABA) Model Rules for Lawyer Disciplinary Enforcement (MRLDE) as they existed in mid-2015. The MRLDE’s numbering scheme has largely been preserved. Unless there was a sound reason to alter a model rule, it was not changed. Where modifications or additions have been made based on other sources, information about those sources is provided. The ABA’s commentary to its MRLDE is not included here; however, it will be highly instructive and persuasive authority. The sources referenced include Court Rules and Committee Rules. These references are to procedural rules in place in mid-2015, including the Supreme Court of Guam’s Rules for the

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

Discipline of Attorneys adopted through Promulgation Order 98-001 and amended by Promulgation Order 99-003 (“Court Rules”), and the Bar of Guam Ethics Committee Rules of Procedure – Disciplinary Proceedings, amended by Promulgation Orders 99-004 and 08-003-01 (“Committee Rules”).

PREAMBLE

The Supreme Court of Guam hereby declares that, under the Organic Act of Guam, it has exclusive responsibility within Guam for the structure and administration of the lawyer discipline and disability system. As such, the Court has the power and authority to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability in an appropriate manner that does not discriminate by race, creed, color, sex, sexual orientation, national origin, or any other protected classification under federal or Guam law.

The license to practice law in this territory is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions of that privilege.

In the exercise of the Supreme Court's authority to disbar, suspend, or otherwise discipline members of the Bar of Guam for misconduct, the Supreme Court adopts and promulgates the following rules, which shall govern disciplinary and disability proceedings against members of the Bar of Guam and all attorneys within this Court's jurisdiction. All gender-specific pronouns in the following rules are to be construed as applying to all attorneys, regardless of gender.

SOURCE: Preamble to MRLDE; Preamble to Court Rules

I. STRUCTURE AND SCOPE

Rule 1. Comprehensive Lawyer Regulatory System.

The Supreme Court of Guam (“Court”) hereby establishes a comprehensive system of regulation of the legal profession in Guam and adopts these Rules for Lawyer Disciplinary Enforcement and Disability Proceedings (“Rules”) in furtherance of the Court’s duty and responsibility to ensure proper administration of lawyer discipline and disability matters. The purpose of these Rules is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or are likely to be unable to properly discharge their professional duties. Proceedings under these Rules are *sui generis*. The system shall be comprised of the following component entities, together with others that may from time to time be approved by the Court: the Commission on Lawyer Regulation, the Investigative Committee, the Hearing Panel, and Regulation Counsel.

SOURCE: MRLDE 1; Committee Rules 1 & 2; Court Rule 1.

Rule 2. Commission on Lawyer Regulation.

(a) Commission.

There is hereby established a body charged with administering the Comprehensive Lawyer Regulatory System to be known as the Commission on Lawyer Regulation (“Commission”). The Commission shall oversee the administrative processes of the remaining components of the system without substantive involvement in any particular matters concerning lawyer misconduct or disability.

(b) Appointment.

The Commission shall consist of seven members appointed by the Court and shall be empowered with the requisite authority and responsibility to administer the lawyer discipline and disability system as described in these Rules. The Commission shall consist of five active members of the bar of Guam in good standing and two public members who shall serve for fixed, staggered terms. Three lawyer members and one public member shall be appointed to initial terms of two years while two lawyer members and one public member shall be appointed to initial terms of four years. Subsequent terms of all members shall be for four years. No member shall serve more than two consecutive full four-year terms; however, after serving two consecutive four-year terms, a member may be reappointed to the Commission after having been off the Commission for one year. The Court shall appoint lawyer members of the Commission to serve as chair and vice-chair for the remainder of their appointed term.

A member of the Commission may be removed by the Court during their term of office upon a showing of good cause. Alternate and *pro tempore* members may be appointed by the Court as deemed appropriate. Former Commission members may serve as members of the Commission *pro tempore*, as needed, upon order of the Court.

(c) Quorum.

Four members of the Commission shall constitute a quorum. The Commission may act with the concurrence of a majority of the quorum participating and voting.

(d) Powers and Duties.

The Commission shall have the following powers and duties:

- (1) To periodically review the functioning of the Comprehensive Lawyer Regulatory System and submit reports to the Court which may include proposed amendments to these Rules, the Guam Rules of Professional Conduct, or other Court rules;

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(2) To conduct an annual performance evaluation of Regulation Counsel upon inviting input from the Investigative Committee and Hearing Panel and utilizing the Judiciary of Guam's standard evaluation form(s) with the resulting evaluation to be submitted to the Court for consideration;

(3) To coordinate appointments to the Investigative Committee and Hearing Panel as needed by screening voluntary applicants and making recommendations to the Court for appointment; in the event there are not a sufficient number of eligible applicants, then the Court may direct the Commission to initiate contact with members of the Guam bar and the public to determine their willingness and availability to serve, and submit proposed names to the Court for consideration in making such appointments;

(4) To receive and consider complaints that may from time to time be lodged regarding the conduct of Regulation Counsel, the Investigative Committee or its members, or the Hearing Panel or its members, and to conduct such investigations as deemed appropriate by the Commission regarding any such complaints. Upon completing review of a complaint, the Commission is authorized to dismiss the matter if it is found to be unsubstantiated or to involve conduct that, while of concern, is minor and isolated, and such decision shall be final with notice of such decision to be provided by the Commission chair to the complainant and the subject individuals or body. Otherwise, the Commission shall submit in letter form to the Court its report and recommended action other than closure through the Clerk of Court of the Supreme Court as a confidential matter, a copy of which shall be provided by the Commission chair to the subject individuals or body, noting that members of the Investigative Committee or Hearing Panel or Regulation Counsel may only be removed for good cause shown. The Court shall thereafter determine the matter's final disposition and shall provide written notice of its determination to the complainant and the subject individuals or body;

(5) To appoint and supervise necessary staff to assist the Commission, recognizing that employed staff of the Commission may be hired by the Judiciary of Guam and assigned to the Commission, whether as classified or unclassified employees or other status as the case may be;

(6) To inform the public about the existence and operation of the Comprehensive Lawyer Regulatory System and its components including information on how to file a complaint, the disposition of each matter in which public discipline has been imposed or a lawyer has been transferred to or from disability inactive status, and when a lawyer who left the practice of law in Guam relative to discipline or disability has been reinstated or readmitted;

The Commission shall inform the public no less than four (4) times a year in a newspaper of general circulation in Guam, and by such other means as the Commission may deem appropriate, of the existence and operation of the lawyer discipline system and the means by which the public may make a complaint against a lawyer;

The Commission shall regularly inform the public in such manner as it may determine appropriate of any disciplinary action taken against a lawyer that results in public discipline;

(7) To delegate, in its discretion, to the chair or vice-chair the power to act for the Commission on administrative and procedural matters; and

(8) To develop and implement training programs and materials, with the assistance of Regulation Counsel, for all system volunteers and for Regulation Counsel.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(e) Expenses.

Members of the Commission shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. Requests for reimbursement may be submitted to the office of the Clerk of Court of the Supreme Court for consideration.

No later than March 1, the Commission shall prepare an annual budget for submission to the Court, which shall consist of the Commission's own budget as well as the budgets for the Investigative Committee, the Hearing Panel, and Regulation Counsel's office. The Commission shall make reasonable and necessary expenditures pursuant to its approved budget to perform the duties of the Commission.

(f) Abstention of Members.

A member of the Commission, including *pro tempore* members, shall not personally represent a lawyer in any proceeding as provided in these Rules during the member's service. A former member of the Commission, including *pro tempore* members, shall not personally represent a lawyer in any proceeding as provided in these Rules for a period of one year following completion of the former member's service.

SOURCE: MRLDE 2; Committee Rule 6 (subsection (e)(6))

Rule 3. Investigative Committee.

(a) Committee.

There is hereby established a body known as the Investigative Committee ("Investigative Committee") charged with overseeing the substantive investigative component of the Comprehensive Lawyer Regulatory System.

(b) Appointment.

The Investigative Committee shall consist of five active members of the bar of Guam in good standing and two public members who shall serve for fixed, staggered terms. Three lawyer members and one public member shall be appointed to initial terms of two years while two lawyer members and one public member shall be appointed to initial terms of four years. Subsequent terms of all members shall be for four years. No member shall serve more than two consecutive full four-year terms; however, after serving two four-year terms, a member may be reappointed to the Investigative Committee after having been off the Investigative Committee for one year. The Court shall appoint lawyer members of the Investigative Committee to serve as chair and vice-chair for the remainder of their appointed term. Alternate and *pro tempore* members may be appointed by the Court as deemed appropriate. Former Investigative Committee members may serve as members of the Investigative Committee *pro tempore*, as needed, upon order of the Court. Upon adoption of these Rules, current members of the Guam Bar Ethics Committee's Investigative Panel shall be eligible for initial appointments under this rule.

(c) Quorum.

Four members, including at least one public member, of the Investigative Committee shall constitute a quorum. The Investigative Committee may act with the concurrence of a majority of the quorum participating and voting, except that no action imposing discipline or approving the filing of formal charges may be taken without the concurrence of four members.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(d) Powers and Duties.

The Investigative Committee shall have the following powers and duties:

(1) To authorize and oversee Regulation Counsel's full investigations of complaints brought by any source against lawyers pursuant to these Rules, including matters initially opened on the Investigative Committee's own motion based on information coming to the Investigative Committee's attention from any source including reports from Regulation Counsel;

(2) To dismiss a matter at the screening stage or following a full investigation approved by the Investigative Committee, and direct Regulation Counsel to issue a notice of dismissal pursuant to Rule 5(b)(18);

(3) To issue a letter of caution to a respondent upon dismissal of a matter at the Investigative Committee's discretion;

(4) To dismiss a matter with or without prejudice at the Investigative Committee's discretion; however, if a dismissal is silent as to prejudice, it shall be presumed dismissed without prejudice;

(5) To issue a private admonition for minor and isolated misconduct when stipulated or consented to by a subject lawyer, prior to the filing of formal charges;

(6) To direct Regulation Counsel to prosecute lawyer discipline matters on its behalf through the filing of formal charges with the Hearing Panel as deemed appropriate by the Investigative Committee;

(7) To report and make recommendations to the Commission regarding the general functioning of the Comprehensive Lawyer Regulatory System, which may include proposed amendments to these Rules, the Guam Rules of Professional Conduct, or other Court rules; and

(8) To regularly meet to conduct the business of the Investigative Committee and to maintain proper records of Investigative Committee meetings as well as all Investigative Committee decisions, to include preparation of meeting minutes, which task may be delegated to Regulation Counsel subject to the Investigative Committee's final approval.

(e) Expenses.

Members of the Investigative Committee shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. Requests for reimbursement may be submitted to the office of the Clerk of Court of the Supreme Court for consideration.

The Investigative Committee shall prepare an annual budget for submission to the Commission. The Investigative Committee shall make reasonable and necessary expenditures pursuant to its approved budget to perform the duties of the Investigative Committee.

(f) Abstention and Disqualification of Members.

A member of the Investigative Committee, including a *pro tempore* member, shall not personally represent a lawyer in any proceeding as provided in these Rules during the member's service. A former member of the Investigative Committee, including a *pro tempore* member, shall not personally represent a lawyer in any proceeding as provided in these Rules for a period of one year following completion of the member's service. Members of the Committee shall not participate on the Committee with regard to a particular matter if an actual bias exists between the member and a respondent lawyer. __At the

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

discretion of each Investigative Committee member, they may recuse themselves from participating on the Investigative Committee for any particular matter in their personal discretion with the general understanding that they are expected to sit on matters unless their recusal or disqualification is necessary.

SOURCE: MRLDE 2; Committee Rules 3 & 4

Rule 4. Hearing Panel.

(a) Panel.

There is hereby established a body known as the Hearing Panel charged with overseeing the substantive adjudicative component of the Comprehensive Lawyer Regulatory System.

(b) Appointment.

The Hearing Panel shall consist of seven members appointed by the Court, including five lawyers who are active members of the bar of Guam in good standing and two public members who shall serve for fixed, staggered terms. Two lawyer members and one public member shall be appointed to initial terms of two years, and three lawyer members and one public member shall be appointed to initial terms of four years. Subsequent terms of all members shall be for four years. No member shall serve more than two consecutive full four-year terms; however, after serving two four-year terms, a member may be reappointed to the Hearing Panel after having been off the Hearing Panel for one year. The Court shall appoint lawyer members of the Hearing Panel to serve as chair and vice-chair for the remainder of their appointed term. Alternate and *pro tempore* members may be appointed by the Court as deemed appropriate. Former Hearing Panel members may serve as members of the Hearing Panel *pro tempore*, as needed, upon order of the Court. Upon adoption of these Rules, current members of the Guam Bar Ethics Committee's Adjudication Panel shall be eligible for initial appointments under this rule.

(c) Quorum.

Four members of the Hearing Panel shall constitute a quorum. The Hearing Panel may act with the concurrence of a majority of the quorum participating and voting.

(d) Powers and Duties.

The Hearing Panel shall have the following powers and duties:

(1) To consider and decide prehearing motions and other prehearing matters with such duty to be handled by the chair unless the chair determines in their discretion that the full Hearing Panel should consider a particular prehearing motion or matter;

(2) To conduct hearings into formal charges of misconduct or other hearings as ordered by the Court; and

(3) To submit to the Court written findings of fact, conclusions of law, and recommendations as directed by these Rules.

(e) Expenses.

Members of the Hearing Panel shall receive no compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties. Requests for reimbursement may be submitted to the office of the Clerk of Court of the Supreme Court for consideration.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

The Hearing Panel shall prepare an annual budget for submission to the Commission. The Hearing Panel shall make reasonable and necessary expenditures pursuant to its approved budget to perform the duties of the Hearing Panel.

(f) Abstention and Disqualification of Members.

A member of the Hearing Panel, including a *pro tempore* member, shall not personally represent a lawyer in any proceeding as provided in these Rules during the member's service. A former lawyer member of the Hearing Panel, including *pro tempore* members, shall not personally represent a lawyer in any proceeding as provided in these Rules for a period of one year following completion of the member's service. A Hearing Panel member shall not take part in any proceeding if an actual bias exists between the member and a respondent lawyer. At the discretion of each Hearing Panel member, they may recuse themselves from participating on the Hearing Panel for any particular matter in their personal discretion with the general understanding that they are expected to sit on matters unless their recusal is necessary.

Upon a *timely* suggestion in writing filed with the Chair of the Hearing Panel by a respondent seeking disqualification of a Hearing Panel member from a matter, the challenged member shall file their answer to the suggestion of disqualification within five (5) business days. If the challenged member fails to timely file their answer on the suggestion of their disqualification, the challenged member shall be deemed to have consented to their disqualification. If the challenged member's answer states that they will not recuse themselves, the challenged member's possible disqualification shall be immediately considered by the remaining members of the Hearing Panel and a written decision shall be filed within ten (10) business days. If the Hearing Panel fails to timely file a decision on the matter, the challenged member shall be disqualified from the matter. If the Hearing Panel timely determines that the challenged member's disqualification is not required, the decision shall not be subject to immediate review.

SOURCE: MRLDE 3; Committee Rule 3.1 & 4

Rule 5. Regulation Counsel.

(a) Appointment.

The Court shall appoint a lawyer admitted to practice law in Guam to serve as Regulation Counsel. No full-time Regulation Counsel or staff on salary with the Judiciary of Guam shall engage in the private practice of law or serve as Regulation Counsel under the Judicial Discipline System for the discipline of judges in Guam.

(b) Powers and Duties.

Regulation Counsel shall perform all prosecutorial functions and shall have the following powers and duties:

- (1) receive information and complaints regarding the conduct of lawyers over whom the Court has jurisdiction, provided this rule shall not be construed to limit the authority of any authorized agency to institute proceedings or actions regarding such conduct;
- (2) provide assistance to complainants in stating their complaints;
- (3) provide information to complainants about the remedies available under the rules of the Court, the operations and procedures of agencies designated by the Court under Rule 1, and the status of their complaints; and

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(4) determine whether the facts stated in a complaint or other information regarding the conduct of a lawyer provide grounds for further action by any committee designated by the Court under Rule 1 or any other component of the Judiciary of Guam, including but not limited to the Board of Law Examiners, and/or any outside agency or body including but not limited to the Guam Police Department and the Office of the Attorney General and:

(A) dismiss the complaint; or

(B) forward the complaint to the appropriate committee or component of the Judiciary of Guam and/or outside agency or body; and

(i) provide to the complainant a notice of dismissal, which includes a copy of the written guidelines for dismissal of complaints and notice of complainant's right to appeal pursuant to Rule 18(j); or

(ii) provide to the complainant a notice of referral, which includes a concise written statement of the facts and reasons for referral of the complaint to a committee or an agency other than the disciplinary agency.

(5) To evaluate all information to determine whether it concerns a lawyer subject to the jurisdiction of the Court because it relates to misconduct by the lawyer or to the incapacity of the lawyer;

(6) To investigate all information which, if true, would be grounds for discipline or transfer to disability inactive status, and to investigate all facts pertaining to petitions for reinstatement or readmission;

(7) To recommend dismissal, informal admonition, a stay, the filing of formal charges, or the petitioning for transfer to disability inactive status with respect to each matter brought to the attention of a component entity as appropriate;

(8) To prosecute before the Hearing Panel and the Court disciplinary proceedings and proceedings for transfer to or from disability inactive status;

(9) To appoint and supervise staff and investigators needed for the performance of prosecutorial functions;

(10) To notify promptly the complainant and the respondent of the status and the disposition of each matter, notwithstanding the general confidentiality provision, including but not limited to providing to the complainant notice of the date, time, and location of the hearing;

(11) [Reserved]

(12) To notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability inactive status, reinstatement, readmission, or any public discipline imposed in Guam;

(13) To seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction;

(14) To forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a serious crime (as hereafter defined) in Guam;

(15) To maintain permanent records of discipline and disability matters, subject to the

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

expunction requirements of Rule 5(B)(12), and compile statistics to aid in the administration of the system, including but not limited to a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all formal proceedings (or the reporter's notes if not transcribed), and other records as the Commission or Court requires to be maintained. Statistical summaries shall contain, at a minimum:

(A) time records for all counsel and investigators, tracked by case or other task including time spent on non-disciplinary functions;

(B) the number of pending cases at each stage in the disciplinary process for each counsel and for the Investigative Committee and Hearing Panel;

(C) the number of new cases assigned to each counsel during the year and the total for the Investigative Committee;

(D) the number of cases carried over from the prior year for each counsel and the total for the Investigative Committee;

(E) the number of cases closed by each counsel during the year and the total for the Investigative Committee;

(F) the number of cases of special difficulty or complexity at each stage in the proceedings; and

(G) the ratio of staff turnover.

(16) To expunge (i.e. destroy) after three years all records or other evidence of the existence of complaints terminated by dismissals or referrals to other component entities pursuant to these Rules, except that upon Regulation Counsel's application, notice to respondent, and a showing of good cause, the Investigative Committee may permit Regulation Counsel to retain such records for one additional period of time not to exceed three years.

(A) Notice to Respondent. If the respondent was contacted by the Investigative Committee concerning the complaint, or the Investigative Committee otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the expunction.

(B) Effect of Expunction. After a file has been expunged, any Investigative Committee response to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.

(17) Regulation Counsel and the Commission shall prepare and publish each year an Annual Report, including but not limited to a description of the disciplinary system and its operations, including caseload processing information for the year. Caseload processing data shall include: (1) time line processing information; (2) the number of complaints filed; (3) the number of complaints screened out; (4) the number of complaints investigated; (5) the number of cases dismissed; (6) public disciplinary actions taken and private sanctions imposed; (7) diversionary dispositions; and (8) such other information that may be helpful to the public and the profession in comprehending the operations of the system as well as its efficiency and effectiveness. The annual report shall be published on the Regulation Counsel's website.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(18) Upon direction from the Investigative Committee to dismiss a complaint, Regulation Counsel shall issue a notice of dismissal to the complainant which includes: (1) a copy of any written communication from the respondent to the disciplinary counsel relating to the matter except information that is subject to the privilege of one other than the complainant; (2) a concise written statement of the facts and reasons a matter has been dismissed prior to a hearing; (3) a copy of the written guidelines for dismissal; and (4) notice of complainant's right to appeal pursuant to Rule 18(j).

(c) Advisory Opinions Prohibited. Regulation Counsel shall not render advisory opinions, either orally or in writing.

(d) Ex Parte Communication with Regulation Counsel.

(1) Members of the Hearing Panel, the Commission, or the Court shall not communicate ex parte with Regulation Counsel regarding a pending or impending disciplinary matter except as explicitly provided for by law or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided that:

(A) it is reasonable to believe that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

(B) provision is promptly made to notify all other parties of the substance of the ex parte communication and an opportunity to respond is allowed.

(2) A violation of this rule shall be a ground for lawyer or judicial discipline, as appropriate, and cause for removal from the Hearing Panel or the Commission.

(e) Disqualification.

In addition to complying with the Rules of Professional Conduct regarding successive government and private employment (Guam Rule of Professional Conduct 1.11), a former Regulation Counsel shall not personally represent a lawyer in any proceeding as provided in these Rules for a period of one year following completion of the Regulation Counsel's service.

(f) Budget.

Regulation Counsel shall prepare an annual budget for submission to the Commission. Regulation Counsel shall make reasonable and necessary expenditures pursuant to the approved budget to perform the duties of Regulation Counsel.

SOURCE: MRLDE 4; Committee Rule 18 (subsection (b)(6))

Rule 6. Expenses.

The salaries of any employees within the Comprehensive Lawyer Regulatory System and reasonable costs and expenses incurred by the office of Regulation Counsel or members of the Commission, Investigative Committee, or Hearing Panel shall be paid or reimbursed by the Court pursuant to an approved budget.

SOURCE: MRLDE 5

Rule 7. Jurisdiction.

(a) Lawyers Admitted to Practice.

Any lawyer admitted by the Court to practice law in Guam, including any formerly admitted lawyer with respect to acts committed while admitted or with respect to acts subsequent thereto which amount

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

to the practice of law or constitute a violation of these Rules or of the Guam Rules of Professional Conduct or any rules or code subsequently adopted by the Court, and any lawyer specially admitted by a court of this jurisdiction for a particular proceeding, and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, including lawyers licensed elsewhere who practice exclusively before the District Court of Guam or a federal body or agency, is subject to the disciplinary jurisdiction of this Court and its Comprehensive Lawyer Regulatory System.

(b) Incumbent Judges.

Incumbent judges shall be subject to the exclusive jurisdiction of the Committee on Judicial Discipline within this Court's Judicial Discipline System with regard to any allegations of misconduct whether prior to or during their tenure as a judge. If an incumbent judge is to be removed from office in the course of a judicial discipline or disability proceeding, the Court shall first afford the Investigative Committee and the judge an opportunity to submit a recommendation whether lawyer discipline should be imposed, and if so, the extent thereof.

(c) Former Judges.

A former judge who has resumed the status of an active lawyer is subject to the exclusive jurisdiction of the Comprehensive Lawyer Regulatory System for conduct as a lawyer. The Committee on Judicial Discipline shall have continuing and exclusive jurisdiction over former judges regarding allegations that misconduct occurred during service as a judge if a complaint is made within one year following service as a judge.

(d) Powers Not Assumed.

These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

SOURCE: MRDLE 6

Rule 8. Periodic Assessment of Lawyers; Registration; Roster of Lawyers.

(a) Requirement. Every member of the Guam bar shall pay an annual regulation fee, in addition to Guam bar annual dues, for each calendar year to be set by the Court from time to time. The fee shall be used to help defray the costs of disciplinary administration and enforcement under these Rules, other components of the system of lawyer regulation under other rules established by the Court, and for other purposes the Court shall from time to time designate. A late fee to be set by the Court from time to time shall immediately accrue if the annual fee is not timely paid.

(b) Exemption of Judges. Full-time judges shall be exempt from the payment of active membership fees during the time they serve in office; however, the inactive fee shall be paid.

(c) Suspension for Nonpayment. Unless excused by the Court, any lawyer who fails to timely pay the fees required under paragraph (a) or (g) shall be summarily administratively suspended by order of the Court, provided that a notice of delinquency is served on the lawyer by the Clerk of Court of the Supreme Court at least thirty (30) days prior to such suspension.

(d) Reinstatement after Payment. Any lawyer suspended under paragraph (c) shall be reinstated without further order if, within five years of the effective date of the suspension for nonpayment, the lawyer requests reinstatement in writing and makes payment of all arrears at the active annual rate plus all annual late fees and a penalty of 20% of the total amount due from the date of the last payment to the

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

date of the request for reinstatement, all payable to the Guam bar, as well as a penalty of \$300 payable to the Court. Any lawyer who fails to make these complete payments within five years of the effective date of the suspension for nonpayment may, in the discretion of the Court, be required to formally petition for reinstatement pursuant to Rule 25.

(e) Registration Statement. To facilitate the collection of the annual fee provided for in paragraph (a) and the general regulation of lawyers, each lawyer required by this rule to pay an annual fee shall, immediately upon first being sworn in and prior to commencing the practice of law in Guam and then on or before January 1 of every year thereafter, file with the clerk of this Court a registration statement, on a form prescribed by this Court, setting forth the information described in Rule 8(j), and such other information as this Court may from time to time direct. The filing of such registration statement and payment of the annual fee shall automatically register the lawyer as a member of the Guam Bar Association. Each lawyer shall file with the clerk of this Court a supplemental statement noting any change in the information previously submitted within thirty days of the change.

(f) Suspension for Failure to File Registration Statement. Any lawyer who fails to file the statement or supplement in accordance with paragraph (e) of this rule shall be summarily administratively suspended by order of the Court, provided that a notice of delinquency is served on the lawyer by the Clerk of Court of the Supreme Court at least thirty (30) days prior to such suspension. The lawyer shall remain suspended until complete compliance with this Rule is demonstrated and payment of a penalty of \$300 to the Court has been made, whereupon the lawyer shall be reinstated without further order.

(g) Notice of Transfer to Inactive Status. A lawyer who has retired or is not engaged in the active practice of law in Guam but who does not wish to resign from the bar of Guam shall advise the Clerk of Court of the Supreme Court in writing that the lawyer desires to assume inactive status and discontinue the practice of law. Upon the filing of the notice, the lawyer shall no longer be eligible to practice law. A lawyer who is on inactive status shall not be obligated to pay the annual fee imposed by this rule upon active practitioners; however, they must continue to submit an annual registration statement and any supplemental statement in accordance with paragraph (e) of this rule and must pay an annual fee for each calendar year to be set by the Court from time to time for their inactive status in accordance with paragraph (a) of this rule. If the lawyer has reached the age of 65 as of January 1, the inactive fee shall be waived. A lawyer on inactive status shall be removed from the roll of those classified as active until, and only if, the lawyer is reinstated to active status. A lawyer on inactive status shall be subject to paragraphs (c), (d), and (f) of this rule herein relative to suspension for non-payment or failure to file a registration statement.

(h) Reinstatement from Inactive Status. Any lawyer on inactive status under paragraph (g) shall be reinstated without further order if the lawyer makes an application within five years of the effective date of transfer to inactive status, so long as they are not under an order of discipline in any jurisdiction at the time. Any lawyer who fails to make an application for reinstatement within five years of the effective date of transfer to inactive status may, in the discretion of the Court, be required to petition for reinstatement pursuant to Rule 25. Any lawyer who is under an order of discipline in any other jurisdiction at the time they seek transfer from inactive to active status in Guam shall be required to petition for reinstatement pursuant to Rule 25.

(i) Resignation While in Good Standing.

(1) A lawyer who is not the subject of any pending disciplinary investigation, proceeding, or order in any jurisdiction, including Guam; who is not the subject of a disciplinary order issued by

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

the Investigative Committee, the Hearing Panel, or the Court; and who is otherwise in good standing, may petition the Court for leave to resign and surrender his or her license to practice law. Temporary lawyers who choose to cease practicing law in Guam prior to the expiration of their temporary licensure must resign and surrender their license to practice law; however, their 5-year period of temporary licensure eligibility shall continue to run uninterrupted pursuant to Rule 3.01(e) of the Guam Rules Governing Admission to the Practice of Law notwithstanding their resignation.

(2) A petition to resign and surrender license shall be filed with the Clerk of Court of the Supreme Court and payment of a fee of \$100.00 shall be made.

(3) The petition shall be supported by the petitioner's affidavit attesting to the fact that petitioner is not the subject of any pending disciplinary investigation, proceeding, or order in any jurisdiction, including Guam.

(4) The petition shall be served by the lawyer in person or by email and regular mail upon Regulation Counsel at or before the time it is filed with the clerk.

(5) Within thirty (30) days after the petition is filed, upon consultation with the Investigative Committee, Regulation Counsel may file objections thereto, under seal if deemed appropriate by Regulation Counsel and the Investigative Committee.

(6) The Court shall consider the petition and any objections thereto and shall issue an appropriate order.

(7) Lawyers who have been allowed to resign remain subject to the jurisdiction of the Comprehensive Lawyer Regulatory System and shall promptly inform the Court of any change in their contact information for a period of six (6) years in order that they can be located in the event complaints are made about their conduct while they were engaged in the practice of law in Guam. No annual dues shall be required.

(j) Roster of Lawyers. Regulation Counsel shall have access to current information relating to all lawyers subject to the jurisdiction of the Court which shall be maintained as a roll of attorneys by the Clerk of Court of the Supreme Court, including:

- (1) full name and all names under which the lawyer is or has been admitted or practiced;
- (2) date of birth;
- (3) current employer's name, address, and telephone number;
- (4) current business address and email address;
- (5) current residential address;
- (6) date of admission in Guam;
- (7) Guam bar number;
- (8) date of any transfer to or from inactive status;
- (9) other jurisdictions in which the lawyer is or has been admitted and date of admission;
- (10) location and account numbers in which clients' funds are or have been held by the lawyer;
- (11) nature, date, and place of any public discipline imposed and any reinstatements in any other jurisdiction; and

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(12) date of death, if deceased.

Regulation Counsel shall make items (1), (3), (6), (8), (9), and (11) above available to the public electronically on its office website.

(k) Temporary Bar Members.

A temporary lawyer in Guam whose membership has ended for whatever reason shall remain subject to the jurisdiction of the Comprehensive Lawyer Regulatory System and shall promptly inform the Court of any change in their contact information for a period of six (6) years in order that they can be located in the event complaints are made about their conduct while they were engaged in the practice of law in Guam. No annual dues shall be required.

SOURCE: MRLDE 8; Hawaii Rule 1.10 (subsection (i)); Court Rule 5(c) (subsection (k))

COMMENT: Annual registration is mandatory for all GBA members, active or inactive. It consists of both submitting the required registration statement and paying the proper dues. If a member fails to do either step by the deadline, a late fee is immediately due. If the default is not cured, the Court could eventually administratively suspend the member. If that occurs, reinstatement requires submission of the proper registration statement and/or payment to the bar of active dues (regardless whether the person is an inactive member) as well as the active late fee. A \$300 penalty must also be paid to the Court if any order of administrative suspension is issued.

Rule 9. Grounds for Discipline.

(a) It shall be a ground for discipline for a lawyer to:

(1) violate or attempt to violate the Guam Rules of Professional Conduct, or any other rules or laws of this jurisdiction regarding professional conduct of lawyers;

(2) engage in conduct violating applicable rules or laws of another jurisdiction regarding professional conduct of lawyers; or

(3) willfully violate a valid order imposing discipline, willfully fail to comply with a subpoena validly issued under Rule 14, or knowingly fail to respond to a lawful demand from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.

(b) Lesser Misconduct. Lesser misconduct is conduct that does not warrant a sanction restricting the respondent's license to practice law. Conduct shall not be considered lesser misconduct if any of the following considerations apply:

(1) the misconduct involves the misappropriation of funds;

(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person;

(3) the respondent has been publicly disciplined in the last three years;

(4) the misconduct is of the same nature as misconduct for which the respondent has been disciplined in the last five years;

(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent;

(6) the misconduct constitutes a "serious crime" as defined in Rule 19(C); or

(7) the misconduct is part of a pattern of similar misconduct.

SOURCE: MRLDE 9

Rule 10. Sanctions.

(a) Types of Sanctions.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

Misconduct shall be grounds for one or more of the following sanctions:

(1) Disbarment by the Court.

(2) Suspension by the Court for an appropriate fixed period of time not in excess of three years. While suspended a respondent shall hold the status “suspended active member” and must register annually; however, they are not required to pay annual dues or complete CLE hours.

(3) Probation imposed by the Court not in excess of two years; provided, however, that probation may be renewed for an additional two year period by order of the Court upon recommendation by the Investigative Committee. The conditions of probation shall be stated in writing. Probation shall be used only in cases where there is little likelihood that the respondent will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised. Probation may be terminated by order of the Court upon the filing of an affidavit by respondent showing compliance with the conditions, and an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that statement.

(4) Public Reprimand by the Court. A reprimand shall be in writing and either imposed in person or served upon the respondent by certified mail. A reprimand shall be published in a newspaper of general circulation and on the Court and Guam Bar Association websites to inform the public and for the guidance of other lawyers. Any costs associated with such publication shall be assessed against the respondent.

(5) Private Admonition by Investigative Committee or Hearing Panel imposed with the consent of the respondent. An admonition cannot be imposed after formal charges have been filed unless imposed by stipulation approved by the Hearing Panel within ninety (90) days of the filing of formal charges while the matter remains confidential, which disposition shall be final and need not be submitted to the Court. Admonitions shall be in writing, served upon the respondent, and shall constitute private discipline. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed. A summary of the conduct for which an admonition was imposed may be published on the Guam Bar Association website for the education of the profession and the public, but the lawyer shall not be identified. An admonition may be used in subsequent proceedings in which the respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

(6) Upon order of the Court, or upon consent, restitution to persons financially injured and disbursement of all or part of the lawyer’s or law firm’s fee.

(7) Upon order of the Court, or upon consent, assessment of the costs of the proceedings, including but not limited to the costs of investigations, reasonable attorney fees, service of process, witness fees, and court reporter’s services, in any case where discipline is imposed or there is a transfer to disability inactive status.

(8) Limitation by the Court on the nature or extent of the respondent’s future practice.

(b) Conditions.

Written conditions may be attached to a private admonition or a public reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

formal charges against the respondent.

(c) Factors to be Considered in Imposing Sanctions.

In imposing a sanction after a finding of lawyer misconduct, the following factors, as enumerated in the *ABA Standards for Imposing Lawyer Sanctions*, appended to these Rules, shall be considered:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

(d) Public Nature of Sanctions.

Disposition of lawyer discipline by the Court shall be public in cases of disbarment, suspension, probation, and reprimand. In all cases of public discipline by the Court, the Court shall issue a written opinion or order setting forth its justification for imposing the sanction in that particular case.

SOURCE: MRLDE 10; Court Rule 12(a) (subsection (a)(8))

II. PROCEDURE FOR DISCIPLINARY PROCEEDINGS

Rule 11. Generally.

(a) Evaluation.

Regulation Counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity. Complaints and information about lawyers need not be verified, written, or in any particular form. If the lawyer is not subject to the jurisdiction of the Court, the matter shall be referred to the appropriate entity in any jurisdiction in which the lawyer is admitted. If the information, if true, would not constitute misconduct or incapacity, the matter may be referred to any of the component entities of the comprehensive system of lawyer regulation established by Rule 1, or dismissed. If the lawyer is subject to the jurisdiction of the Court and the information alleges facts which, if true, would constitute misconduct or incapacity, with the approval of the Investigative Committee, Regulation Counsel shall conduct an investigation.

(b) Investigation.

(1) All investigations shall be conducted by Regulation Counsel. Upon the conclusion of an investigation, Regulation Counsel may recommend to the Investigative Committee:

(A) dismissal; or

(B) a private admonition, the filing of formal charges, the petitioning for transfer to disability inactive status, or a stay.

(2) Notice to Respondent. Regulation Counsel shall not recommend a disposition other than dismissal or stay without first notifying the respondent in writing of the substance of the matter. Except under extenuating circumstances, such as a pending criminal investigation, Regulation Counsel, upon receipt of a complaint and a determination that an investigation is appropriate, shall provide respondent with a copy of the complaint and afford him or her an opportunity to be heard in writing within twenty-one (21) days. Notice to the respondent at his or her last known address is

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

sufficient.

(3) Regulation Counsel's recommended disposition of a matter shall be reviewed by the Investigative Committee, which may approve, modify, or disapprove the recommendation or direct that Regulation Counsel investigate the matter further. A dismissal may be accompanied by an informal letter of caution to the respondent from the Investigative Committee.

(c) Private Admonition -- Imposition.

(1) If the Investigative Committee determines that it is appropriate for a matter to be concluded by private admonition consistent with the requirements of Rule 10(a)(5) above, and no stipulation has been reached, Regulation Counsel shall notify the respondent in writing of the proposed disposition and of the right to demand in writing within fourteen (14) days that the matter be disposed of by a formal proceeding. Failure of the respondent to so demand within fourteen (14) days after written notice of the proposed admonition constitutes consent to the admonition.

(2) If the respondent within fourteen (14) days demands a formal hearing, formal charges shall be instituted within ninety (90) days.

(d) Formal Charges.

If a matter is to be resolved by a formal proceeding, Regulation Counsel shall prepare formal charges in writing, subject to the approval of the Investigative Committee, which give fair and adequate notice of the nature of the alleged misconduct.

(1) Regulation Counsel shall file the charges with the chair of the Hearing Panel.

(2) Regulation Counsel shall cause a copy of the formal charges to be served upon the respondent and proof of service shall be filed with the chair of the Hearing Panel.

(3) The respondent shall file a written answer with the chair of the Hearing Panel and serve a copy on Regulation Counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the Hearing Panel. In the event the respondent fails to answer within the prescribed time, or the time as extended, the factual allegations shall be deemed admitted as provided in Rule 33(a).

(4) Prehearing Conference.

One mandatory conference shall be ordered and set within thirty (30) days of the filing of respondent's answer to formal charges. The conference is held for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference shall be held before the chair of the Hearing Panel or another member or members of the Hearing Panel designated by the chair.

(5) If there are any material issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in mitigation, the Hearing Panel shall serve a notice of hearing upon Regulation Counsel and the respondent, stating the date and place of hearing at least twenty-five (25) days in advance thereof. The notice of hearing shall advise the respondent of the right to be represented by a lawyer, to cross-examine witnesses and to present evidence. The complainant, if any, shall have the right to make a statement to the Hearing Panel concerning the respondent's alleged misconduct and the effect of the alleged misconduct on the complainant. The hearing shall be recorded. Within fourteen (14) days after the conclusion of any such hearing, both parties shall

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

have the right to submit proposed findings of fact and conclusions of law to the Hearing Panel. The Hearing Panel shall submit its report containing its findings and recommendation on dismissal or sanction to the Court within sixty (60) days thereafter and shall serve the report on Regulation Counsel and respondent.

(6) Information concerning prior discipline of the respondent shall not be divulged to the Hearing Panel until after the Hearing Panel has made a finding of misconduct, unless said information is probative of issues pending in the present matter.

(e) Stipulations and Admissions.

Whenever it may be done without prejudice to the interests of the respondent and/or the Bar of Guam, stipulations and admissions dispensing with formal proof shall be encouraged; provided, however, that any recommendation or action as to discipline or the determination of any other issue shall not be influenced in any way by the fact that some or all of the material facts have been established by admission or stipulation instead of other methods of proof. It shall be the duty of Regulation Counsel, whenever practicable, to confer prior to trial with respondent's counsel, or with respondent if he or she appears without counsel, to explore the possibility of simplifying the issues of fact and attempt to arrive at stipulations covering facts not in dispute. The stipulations of fact shall be admissible in the discretion of the Hearing Panel; provided, however, that in the interests of justice, the Hearing Panel may relieve either party of the effect of a stipulation.

(f) Review by the Court.

The Court may, within its discretion, review a matter if the respondent or Regulation Counsel files objections to the report of the Hearing Panel or if a majority of the Court, within the time for filing objections, votes to review the matter. If the Court does not review the matter, the Court shall impose the sanction.

(1) The respondent and Regulation Counsel may file objections to the report of the Hearing Panel within twenty (20) days from the date of service. After the Court grants review, the respondent and Regulation Counsel may file briefs and present oral arguments pursuant to the rules governing civil appeals. Upon conclusion of the proceedings, the Court shall promptly enter an appropriate order. The decision of the Court shall be in writing and shall state the reasons for the decision. Upon final disposition at any stage of the proceedings, the written findings shall be published on the Court's website and on the website of the Guam Bar Association and a copy shall be mailed to the respondent and the complainant and to the ABA National Lawyer Regulatory Data Bank pursuant to Rule 16(i).

(2) During its review, the Court shall not receive or consider any evidence that was not presented to the Hearing Panel, except upon notice to the respondent and Regulation Counsel and opportunity to respond.

(3) If new evidence warranting a reopening of the proceeding is discovered, the case may be remanded to the Hearing Panel.

(g) **Alternatives to Discipline Program.**

(1) Referral to Program. In a matter involving lesser misconduct as defined in Rule 9(B), prior to the filing of formal charges, Regulation Counsel may refer respondent to the Alternatives to Discipline Program. The Alternatives to Discipline Program may include fee arbitration, arbitration, mediation, law office management assistance, lawyer assistance programs,

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

psychological counseling, continuing legal education programs, ethics school or any other program authorized by the court.

(2) Notice to Complainant. The complainant, if any, shall be notified of the decision to refer the respondent to the Alternatives to Discipline Program, and shall have a reasonable opportunity to submit a statement offering any new information regarding the respondent. This statement shall be made part of the record.

(3) Factors. The following factors shall be considered in determining whether to refer a respondent to the program:

(A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations listed in the complaint is likely to be no more severe than reprimand or admonition;

(B) whether participation in the program is likely to benefit the respondent and accomplish the goals set forth by the program;

(C) whether aggravating or mitigating factors exist; and

(D) whether diversion was already tried.

(4) Contract. Regulation Counsel and the respondent shall negotiate a contract, the terms of which shall be tailored to the individual circumstances. In each case, the contract shall be signed by the respondent and the Regulation Counsel. The contract shall set forth the terms and conditions of the plan for the respondent and, if appropriate, shall identify the use of a practice monitor and/or a recovery monitor and the responsibilities of the monitor(s). The contract shall provide for oversight of fulfillment of the contract terms. Oversight includes reporting of any alleged breach of contract to the Regulation Counsel. The contract shall also provide that the respondent will pay all costs incurred in connection with the contract. The contract shall include a specific acknowledgment that a material violation of a term of the contract renders voidable the respondent's participation in the program for the original charge(s) filed. The contract may be amended upon agreement of the respondent and Regulation Counsel. If a recovery monitor is assigned, the contract shall include respondent's waiver of confidentiality so that the recovery monitor may make necessary disclosures in order to fulfill the monitor's duties under the contract.

(5) Effect of Non-participation in the Program. The respondent has the right not to participate in the Alternatives to Discipline Program. If the respondent does not participate, the matter will proceed as though no referral to the program had been made.

(6) Status of Complaint. After an agreement is reached, the disciplinary complaint shall be held in abeyance [dismissed] pending successful completion of the terms of the contract.

(7) Termination.

(A) Fulfillment of the Contract: The contract is automatically terminated when the terms of the contract have been fulfilled. Successful completion of the contract constitutes a bar to any further disciplinary proceedings based upon the same allegations.

(B) Material Breach: A material breach of the contract shall be cause for termination of the respondent's participation in the program. After a material breach, disciplinary proceedings may be resumed or reinstated.

SOURCE: MRLDE 11; Committee Rule 11 (subsection (a)); Committee Rule 17 (subsection (b)(3)); Committee Rule 29 (subsection (d)(4)); Committee Rule 26 (subsection (e)).

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

Rule 12. Immunity; Laws Inapplicable.

(a) From Civil Suits.

Communications to the Commission, Investigative Committee, Hearing Panel, or Regulation Counsel relating to lawyer misconduct or disability, and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the Commission, members of the Investigative Committee, members of the Hearing Panel, Regulation Counsel, monitors, or any person acting on their behalf, and staff shall be immune from suit for any conduct in the course of their official duties.

(b) Laws Inapplicable.

The Administrative Adjudication Law and the Open Government Law shall not be applicable to proceedings, deliberations, or activities covered by these rules.

SOURCE: MRLDE 12; 7 GCA 9A213

Rule 13. Service.

(a) Service of Formal Charges or Petition.

Service upon the respondent or respondent's counsel of formal charges in any disciplinary proceeding or a petition in any disability proceeding shall be made by personal service by any person authorized by the chair of the Investigative Committee or by registered or certified mail at the respondent's or respondent's counsel's last known business address and may also be emailed to the respondent's or respondent's counsel's email address on record pursuant to Rule 8.

(b) Service of Other Papers.

Service of any other papers or notices required by these rules may be made upon respondent or respondent's counsel by personal service, by regular mail at respondent or respondent's counsel's last known business address, or through their court service box maintained at the Judiciary of Guam consistent with Guam Rules of Civil Procedure 5(g) and Guam Rules of Appellate Procedure 10(c), and may also be emailed to respondent or respondent's counsel's email address on record pursuant to Rule 8.

SOURCE: MRLDE 13

Rule 14. Subpoena Power.

(a) Oaths.

Any member of the Investigative Committee or the Hearing Panel in matters before it, Regulation Counsel in matters under investigation by him or her, and any person authorized by law may administer oaths and affirmations.

(b) Investigatory Subpoenas.

Before formal charges have been filed, Regulation Counsel may, with the approval of the Investigative Committee, compel by subpoena the attendance of witnesses, and the production of pertinent books, papers, and documents, in accordance with the Guam Rules of Civil Procedure. A person subject to an investigatory subpoena under this rule must respond to such subpoena in accordance with the Guam Rules of Civil Procedure, except where otherwise provided in these rules.

(c) Subpoenas for Deposition or Hearing.

After formal charges are filed, Regulation Counsel or respondent may, in accordance with the Guam Rules of Civil Procedure, compel by subpoena issued by the Hearing Panel the attendance of

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

witnesses and the production of pertinent books, papers, and documents at a deposition or hearing under these rules. Respondent shall have notice of any subpoena issued after the filing of formal charges and shall have the right to be present to cross-examine witnesses.

(d) Enforcement of Subpoenas.

The Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed. Any application filed with the Court by Regulation Counsel prior to the filing of formal charges seeking an order compelling compliance with a subpoena shall be filed under seal.

(e) Quashing Subpoena.

Any attack on the validity of a subpoena so issued shall be heard and determined by the Court. Any application filed with the Court prior to the filing of formal charges seeking an order quashing a subpoena shall be filed under seal.

(f) Witnesses and Fees.

Witness fees and mileage shall be the same as those provided for in civil cases.

(g) Subpoena Pursuant to Law of Another Jurisdiction.

Whenever a subpoena is sought in Guam pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Investigative Committee, upon petition for good cause, may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents in Guam. Service, enforcement, or challenges to this subpoena shall be as elsewhere provided in these rules.

SOURCE: MRLDE 14

Rule 15. Discovery.

(a) Scope.

Within twenty (20) days following the filing of an answer, Regulation Counsel and respondent shall exchange the names and addresses of all persons having knowledge of relevant facts. Within sixty (60) days following the filing of an answer, Regulation Counsel and the respondent may take depositions in accordance with Rule 14(c) and shall comply with reasonable requests for

- (1) non-privileged information and evidence relevant to the charges or the respondent, and
- (2) other material upon good cause shown to the chair of the Hearing Panel.

(b) Resolution of Disputes.

Disputes concerning discovery shall be determined by the chair of the Hearing Panel. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.

(c) Civil Rules Not Applicable.

Proceedings under these rules are not subject to the Guam Rules of Civil Procedure regarding discovery except those relating to depositions and subpoenas or as otherwise provided in these rules.

SOURCE: MRLDE 15

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

Rule 16. Access to Disciplinary Information.

(a) Availability of Information.

Upon the filing and service of formal charges, unless a protective order is obtained for specific testimony, documents, or records or the matter has been dismissed or disposed by stipulation, all filings with the hearing panel shall be available to the public.

(b) Confidentiality.

Prior to the filing and service of formal charges in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by Regulation Counsel, with approval of the Investigative Committee, if:

(1) the respondent has waived confidentiality;

(2) the proceeding is based upon allegations that include either the conviction of a crime or public reciprocal discipline;

(3) the proceeding is based upon allegations that have become generally known to the public;
or

(4) there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession.

(c) [Reserved]

(d) Proceedings Alleging Disability.

Proceedings for transfer to or from disability inactive status are confidential. All orders transferring a lawyer to or from disability inactive status are public.

(e) Protective Orders.

In order to protect the interests of a complainant, witness, third party, or respondent, the Hearing Panel may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(f) Request for Nonpublic Information.

A request for nonpublic information other than that authorized for disclosure under paragraph (b) above shall be denied unless the request is from one of the following agencies:

(1) the Court's Board of Law Examiners or the National Conference of Bar Examiners;

(2) lawyer disciplinary enforcement agencies;

(3) other entities, if any, designated by the Court.

(g) Notice to Lawyer.

Except as provided in paragraph (h), if the Investigative Committee decides to provide nonpublic information requested, and if the lawyer has not signed a waiver permitting the requesting entity to obtain nonpublic information, the lawyer shall be notified in writing by personal service or mail at his or

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

her last known business address on record of that information that has been requested and by whom, together with a copy of the information proposed to be released to the requesting entity. The notice shall advise the lawyer that the information shall be released at the end of thirty (30) days following service or mailing of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting entity obtains an order from the Court requiring its release.

(h) Release Without Notice.

If an otherwise authorized requesting entity has not obtained a waiver from the lawyer to obtain nonpublic information, and requests that the information be released without giving notice to the lawyer, such release shall be at the Investigative Committee's discretion and the requesting entity shall certify that:

(1) the request is made in furtherance of an ongoing investigation into misconduct by the lawyer;

(2) the information is essential to that investigation; and

(3) disclosure of the existence of the investigation to the lawyer would seriously prejudice that investigation.

(i) Notice to National Lawyer Regulatory Data Bank.

The Commission shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the ABA

(j) Duty of Officials and Employees.

All officials and employees of component entities of the Comprehensive Lawyer Regulatory System in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by this rule.

SOURCE: MRLDE 16

Rule 17. Dissemination of Disciplinary Information.

(a) Notice to Disciplinary Agencies.

The Commission shall transmit notice of public discipline, transfers to or from disability inactive status, reinstatements, readmissions, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is admitted.

(b) Public Notice of Discipline Imposed.

The Commission shall cause notices of public reprimand, suspension, disbarment, reinstatement, readmission, and transfers to or from disability inactive status to be published on the Guam Bar Association's website and in a newspaper of general circulation in Guam. The costs of publication shall be the responsibility of the lawyer.

(c) Notice to the Courts.

The Commission shall promptly transmit a certified copy of the order of public reprimand, suspension, disbarment, reinstatement, and transfer to disability inactive status to where the lawyer is admitted or is seeking admission to practice.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

SOURCE: MRLDE 17

Rule 18. Additional Rules of Procedure.

(a) Nature of Proceedings.

Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

(b) Proceedings Governed by Rules of Civil Procedure and Evidence.

Except as otherwise provided in these rules, the Guam Rules of Civil Procedure and the Guam Rules of Evidence regarding civil nonjury matters shall generally apply in discipline and disability cases; however, the Hearing Panel may receive and consider any reasonably competent, cogent, and credible evidence.

(c) Standard of Proof.

Formal charges of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

(d) Burden of Proof.

The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on Regulation Counsel. The burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status is on the respondent.

(e) Hearings Recorded.

The hearing shall be recorded. Upon request, the Hearing Panel shall make the record of a hearing available.

(f) Related Pending Litigation.

Upon a finding of good cause, the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.

(g) Amendments.

The Hearing Panel at any time may allow or require amendments to the formal charges or may allow amendments to the answer. The formal charges may be amended to conform to proof or to set forth additional facts whether occurring before or after commencement of the hearing. In the event such an amendment is made, the respondent shall be given reasonable time to answer the amendment and to prepare his defense against the misconduct charged thereby.

(h) Delay Caused by Complainant.

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

(i) Effect of Time Limitations.

Except as otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

(j) Complaints Against Disciplinary Agency Members.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

If a complaint is filed against Regulation Counsel or Regulation Counsel's staff, a member of the Investigative Committee, or a member of the Hearing Panel, the matter shall proceed in accordance with these rules except that:

(1) If the respondent is Regulation Counsel or a member of Regulation Counsel's staff, upon request from the chair of the Investigative Committee, the Commission shall appoint special counsel to act as Regulation Counsel; or

(2) If the respondent is a member of the Investigative Committee or the Hearing Panel, he or she shall be disqualified from the matter.

(k) Right of Appeal

(1) A complainant who is not satisfied with the disposition of a matter by Regulation Counsel may appeal the dismissal of their complaint once as a matter of right to the Chair of the Investigative Committee. The Investigative Committee Chair must receive from complainant a notice of appeal in writing, within thirty (30) days of the date of the notice of dismissal issued pursuant to Rule 5(b)(4)(B)(i). The Investigative Committee Chair can approve the dismissal or direct further investigation by the Investigative Committee. The decision of the Chair or the Committee shall be final, and the standard of review shall be whether Regulation Counsel abused his/her discretion in dismissing the complaint.

(2) A complainant who is not satisfied with the disposition of a matter by the Investigative Committee may appeal the dismissal of their complaint once as a matter of right to the Chair of the Hearing Committee. The Hearing Committee Chair must receive from complainant a notice of appeal in writing, within thirty (30) days of the date of the notice of dismissal issued pursuant to Rule 5(b)(18). The Hearing Committee Chair can approve the dismissal or direct further investigation by the Hearing Committee. The decision of the Chair or the Committee shall be final, and the standard of review shall be whether the Investigative Committee abused its discretion in dismissing the complaint.

SOURCE: MRLDE 18; Committee Rule 22 (subsection (h))

Rule 19. Lawyers Found Guilty of a Crime.

(a) Transmittal of Proof of Determination of Guilt.

A lawyer subject to the disciplinary jurisdiction of this Court who is found guilty of a crime shall within thirty (30) days after the finding of guilt obtain and transmit certified copies of proof of the finding of guilt to the Commission, Regulation Counsel, and counsel for the lawyer disciplinary agency of every jurisdiction in which the lawyer is admitted to practice.

(b) Determination of "Serious Crime."

Upon being advised that a lawyer subject to the disciplinary jurisdiction of this Court has been found guilty of a crime, the Investigative Committee shall determine whether the crime constitutes a "serious crime" warranting immediate interim suspension. If the crime is a "serious crime," the Investigative Committee shall prepare notice regarding interim suspension and forward it to the Court and the respondent with proof of the finding of guilt. Prior to the Court entering any order of interim suspension, the lawyer may assert any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a "serious crime" or that the lawyer is not the individual found guilty. If the crime is not a "serious crime," Regulation Counsel shall process

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

the matter in the same manner as any other information coming to the Investigative Committee's attention.

(c) Definition of "Serious Crime."

A "serious crime" is any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

(d) Immediate Interim Suspension.

The Court has exclusive power to place a lawyer on interim suspension.

(1) Imposition. The Court shall place a lawyer on interim suspension immediately upon proof that the lawyer has been found guilty of a serious crime regardless of the pendency of any appeal.

(2) Termination. The Court has exclusive power to terminate an interim suspension. In the interest of justice, the Court may terminate an interim suspension at any time upon a showing of extraordinary circumstances, after affording Regulation Counsel notice and an opportunity to be heard.

(e) Conviction as Conclusive Evidence.

For purposes of a hearing on formal charges filed as a result of a finding of guilt, a certified copy of a judgment of conviction constitutes conclusive evidence that the lawyer committed the crime, and the sole issue in any such hearing shall be the nature and extent of the discipline to be imposed.

(f) Automatic Reinstatement from Interim Suspension upon Reversal of Finding of Guilt or Conviction.

If a lawyer suspended solely under the provisions of paragraph D demonstrates that the underlying finding of guilt or conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any formal proceeding then pending against the lawyer, the disposition of which shall be determined by the Investigative Committee or Hearing Panel on the basis of the available evidence other than the finding of guilt or conviction.

(g) Notice to Clients and Others on Interim Suspension.

An interim suspension under this rule shall constitute a suspension of the lawyer for the purpose of Rule 27.

SOURCE: MRLDE 19

Rule 20. Interim Suspension for Threat of Harm.

(a) Transmittal of Evidence.

Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of this Court has committed a violation of the Guam Rules of Professional Conduct or is under a disability as herein defined and poses a substantial threat of serious harm to the public, upon approval of the Investigative Committee, Regulation Counsel shall:

(1) transmit the evidence to the Court, under seal, together with a recommendation for

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

immediate interim suspension; and

(2) contemporaneously make a reasonable attempt to provide the lawyer with notice, which may include notice by telephone, that a recommendation for immediate interim suspension has been transmitted to the Court.

(b) Immediate Interim Suspension.

Upon examination of the evidence transmitted to the Court by Regulation Counsel and of rebuttal evidence, if any, which the lawyer has transmitted to the Court prior to the Court's ruling, the Court may enter an order immediately suspending the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing the harm, or may order such other action as it deems appropriate. In the event the order is entered, the Court may appoint a trustee pursuant to Rule 28 to protect clients' interests.

(c) Notice to Clients.

A lawyer suspended pursuant to paragraph (b) shall comply with the notice requirements in Rule 27.

(d) Motion for Dissolution of Interim Suspension.

On notice to Regulation Counsel, a lawyer suspended pursuant to paragraph (b) may move for dissolution or modification of the order of suspension, and in that event the motion shall be heard and determined as expeditiously as the ends of justice require.

SOURCE: MRLDE 20

Rule 21. Discipline by Consent.

(a) Approval of Tendered Admission.

A lawyer against whom formal charges have been filed may tender to Regulation Counsel and the Hearing Panel a conditional admission to the formal charges or to a particular count thereof in exchange for a stated form and extent of discipline. The tendered conditional admission shall be approved or rejected by the Hearing Panel considering the recommendation of Regulation Counsel, subject to final approval or rejection by the Court except in the case of private admonitions prior to formal charges becoming public which are final upon approval by the Hearing Panel. If the stated discipline is rejected by the Hearing Panel or the Court, the admission may be withdrawn and cannot be used against the respondent in any subsequent proceedings.

(b) [Reserved]

(c) Discontinuance of Jurisdiction.

Approval by the Hearing Panel and the Court of the discipline proposed shall divest the Hearing Panel of further jurisdiction and no report need be prepared in such cases. The Court's final order of discipline shall be predicated upon the formal charges and the conditional admission tendered.

(d) Affidavit of Consent.

A lawyer who consents to a stated form of discipline shall present to the Hearing Panel an affidavit stating that he or she consents to the discipline and that:

(1) The consent is freely and voluntarily rendered; the lawyer is not being subjected to

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

coercion or duress; the lawyer is fully aware of the implications of submitting the consent;

(2) The lawyer is aware that there is presently pending a proceeding involving allegations that there exist grounds for discipline, the nature of which shall be specifically set forth;

(3) The lawyer acknowledges that the material facts so alleged are true; and

(4) The lawyer consents because the lawyer knows that if the charges included in the pending proceeding are prosecuted the lawyer could not successfully defend against them.

(e) Order of Discipline.

Regulation Counsel and the subject lawyer shall file a joint petition with the Hearing Panel and Court, which shall include the lawyer's affidavit and sufficiently detailed information to allow the Hearing Panel and the Court to make a prompt and reasoned decision on the matter.. In all instances in which proposed discipline is approved by the Court, the Court shall enter an order disciplining the lawyer by consent. Whether the sanction is made public shall be governed by Rule 10(d).

SOURCE: MRLDE 21

Rule 22. Reciprocal Discipline and Reciprocal Disability Inactive Status.

(a) Regulation Counsel's Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction.

Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in Guam shall promptly inform Regulation Counsel of the discipline or transfer. Upon notification from any source that a lawyer admitted to practice in Guam has been publicly disciplined or transferred to disability inactive status in another jurisdiction, Regulation Counsel shall obtain a copy of the disciplinary order and file it with the Court. In the case of private discipline in another jurisdiction, Regulation Counsel shall inform the Investigative Panel, which shall address the matter as it deems appropriate under these Rules.

(b) Notice Served Upon Respondent.

Upon receipt of a copy of an order demonstrating that a lawyer admitted to practice in Guam has been publicly disciplined or transferred to disability inactive status in another jurisdiction, the Court shall forthwith issue a notice directed to the lawyer and to Regulation Counsel containing

(1) A copy of the order from the other jurisdiction; and

(2) An order directing that the lawyer or Regulation Counsel inform the Court, within thirty (30) days from service of the notice, of any claim by the lawyer or Regulation Counsel predicated upon the grounds set forth in paragraph (d) of this rule, that the imposition of the identical discipline or disability inactive status in this jurisdiction would be unwarranted and the reasons for that claim.

(c) Effect of Stay in Other Jurisdiction.

In the event the public discipline or transfer imposed in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this jurisdiction shall be deferred until the stay expires.

(d) Discipline to be Imposed.

Upon the expiration of thirty (30) days from service of the notice pursuant to the provisions of paragraph (b) of this rule, this Court shall impose the identical public discipline or disability inactive status unless Regulation Counsel or the lawyer demonstrates, or this Court finds that it clearly appears

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(4) The reason for the original transfer to disability inactive status no longer exists. If this Court determines that any of those elements exists, this Court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(e) Conclusiveness of Adjudication in Other Jurisdictions.

In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this jurisdiction.

SOURCE: MRLDE 22

Rule 23. Proceeding in which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated.

(a) Involuntary Commitment or Adjudication of Incompetency.

If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Court, upon proper proof of the fact, after offering the lawyer an opportunity for a show-cause hearing, and, if requested by the lawyer, after conducting a hearing allowing the lawyer to show cause why s/he should not be transferred to disability inactive status, shall enter an order transferring the lawyer to disability inactive status for an indefinite period until further order of the Court. A copy of the order shall be served, in the manner the Court may direct, upon the lawyer, and his or her guardian, if any, and the director of the institution to which the lawyer has been committed.

(b) Inability to Properly Defend.

If a respondent alleges in the course of a disciplinary proceeding an inability to assist in their defense due to mental or physical incapacity, the Court may transfer the lawyer to disability inactive status pending determination of the incapacity. If requested by the lawyer, the lawyer shall within 20 days, be given the opportunity to show cause why s/he should not be transferred to disability inactive status before being so transferred, pending a full hearing and determination of incapacity.

(1) If the Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the respondent retained on disability inactive status until the Court subsequently considers a petition for transfer of the respondent to active status. If the Court considering the petition for transfer to active status determines the petition shall be granted, the Court shall direct the disciplinary proceedings to be resumed at whatever stage they previously stopped at, and completed within 60 days of granting the petition to transfer to active status.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(2) If the Court determines the claim of incapacity to defend to be invalid, any pending or stayed disciplinary proceeding shall resume and the respondent may be placed on interim suspension pending the final disposition of the matter.

(c) Proceedings to Determine Incapacity.

Information relating to a lawyer's physical or mental condition that adversely affects the lawyer's ability to practice law shall be investigated, and, where warranted pursuant to a hearing by the Hearing Panel, shall be the subject of formal proceedings by a trial court in this jurisdiction to determine whether the lawyer shall be transferred to disability inactive status. The hearings shall be conducted in the same manner as competency or involuntary commitment hearings, except that the matter shall be filed by Regulation Counsel directly with the Court at the Investigative Panel's direction, and all of the proceedings including the trial court hearing shall be confidential. The lawyer may represent him/herself, or may be represented by legal counsel, or by a lay representative. The trial court shall provide for notice of the proceedings to the respondent and any representative (legal or lay) which the lawyer may have, and an opportunity to be heard in the matter, and may appoint a lawyer to represent the respondent if the respondent is without adequate representation. The trial court determines whether the respondent is so incapacitated, including the examination of the respondent by qualified medical experts designated by the trial court. If, upon due consideration of the matter, the trial court concludes that the respondent is incapacitated from continuing to practice law, it shall recommend to the Court that an order be entered by the Court transferring the respondent to disability inactive status for an indefinite period and until further order of the Court or until the lawyer files a petition for competency hearing with the trial court, and the trial court enters a new order finding competency. Any pending disciplinary proceedings against the respondent shall be stayed pending a finding of competency by the trial court.

(d) Public Notice of Transfer to Disability Inactive Status.

The Commission shall cause a notice of transfer to disability inactive status to be published in a newspaper of general circulation in Guam.

(e) Reinstatement from Disability Inactive Status.

(1) Generally. No respondent transferred to disability inactive status may resume active status except by order of this Court.

(2) Petition. Any respondent transferred to disability inactive status shall be entitled to petition for transfer to active status twice a year, or at whatever shorter intervals the Court may direct in the order transferring the respondent to disability inactive status or any modifications thereof or in response to proof that the lawyer is competent to resume the practice of law.

(3) Examination. Upon the filing of a petition for transfer to active status, the Court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the respondent by qualified medical experts designated by the Court. In its discretion, the Court may direct that the expense of the examination be paid by the respondent, unless the lawyer can show payment would cause the lawyer an undue hardship, or upon proof of indigence of the lawyer.

(4) Waiver of Doctor-Patient Privilege. With the filing of a petition for reinstatement to active status, the respondent shall be required to disclose the name of each psychiatrist, psychologist, physician, or health care provider supporting the lawyer's return to active practice status. The respondent shall furnish to this Court written consent to the release of information and records

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

relating to the disability if requested by the court-appointed medical experts.

(5) Learning in Law; Bar Examination. The Court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the Board of Law Examiners of successful completion of an examination for admission to practice, if recommended by court-appointed medical experts or the lawyer's medical experts. If the lawyer has been on inactive status for less than one and one-half (1.5) years and if found competent to resume practice, the lawyer shall not be required to take and pass a bar examination.

(6) Granting Petition for Transfer to Active Status. The Court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability impairing the practice of law no longer exists.

(7) Judicial Declaration of Competence. If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Court may dispense with further evidence that the disability impairing the practice of law no longer exists and may immediately direct reinstatement to active status upon terms as are deemed proper and advisable.

SOURCE: MRLDE 23

Rule 24. Resignation by Lawyers Under Investigation or Subject to Formal Charges.

(a) Protection of Public.

A lawyer who is the subject of an investigation into allegations of misconduct may resign from the practice of law in Guam only with consent of the Court and upon terms the Court imposes for the protection of the public.

(b) Sworn Statement.

A lawyer wishing to resign under the provisions of this rule shall submit a sworn written statement admitting to the truth of the charges against them, or if no charges have been served by the Investigative Committee, admitting to the truth of the allegations lodged against them and stating that they consent that the Court may require reasonable conditions for protection of the public, including making a permanent record of the fact of their resignation under this rule with all jurisdictions where they are admitted and all other appropriate authorities.

(c) Procedure.

The Court shall notify the Investigative Committee of any application to resign, and the Committee may submit such matter of fact or argument, within fifteen (15) days, as it may desire. The Court shall then enter its order accepting or rejecting the tendered resignation upon terms as may be appropriate.

(d) Public Record.

If the pending disciplinary matter is not yet public, a request by the respondent to resign shall remain confidential until such time as the Court issues an order accepting the request. If the pending disciplinary matter is public, a request by the respondent to resign shall be public.

(e) Continuing Jurisdiction over Resigned Lawyers.

A lawyer who has been allowed to resign under this rule remains subject to the jurisdiction of the Comprehensive Lawyer Regulatory System and shall promptly inform the Court of any change in their

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

contact information for a period of six (6) years in order that they can be located in the event complaints are made about their conduct while they were engaged in the practice of law in Guam. No annual dues shall be required.

(f) Reinstatement.

A lawyer whose resignation has been accepted may petition for reinstatement under the procedures set forth in Rule 25 regarding a disbarred lawyer.

SOURCE: Court Rule 15.

Rule 25. Reinstatement After Serving Suspension and Readmission.

(a) Generally.

A lawyer who has served a period of suspension or a disbarred lawyer shall be reinstated or readmitted only upon order of the Court. No lawyer may petition for reinstatement until one hundred twenty (120) days prior to the expiration of the period of suspension. No lawyer may petition for readmission until three years after the effective date of disbarment. A lawyer who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of three years from the time of the effective date of the interim suspension.

(b) Petition.

Unless the order imposing discipline provides for automatic reinstatement or readmission without petition, a petition for reinstatement or readmission shall be filed with the Court, must be under oath or affirmation under penalty of perjury, and shall specify with particularity the manner in which the lawyer meets each of the criteria specified in paragraph (e) of this rule or, if not, why there is good and sufficient reason for reinstatement or readmission. Unless abated under Rule 26 the petition must be accompanied by an advance cost deposit in the amount set from time to time by the Court to cover anticipated costs of the proceeding.

(c) Service of Petition.

The lawyer shall serve a copy of the petition upon Regulation Counsel and Regulation Counsel shall provide a copy of the petition to each complainant in the disciplinary proceeding that led to the suspension or disbarment, and shall inform each complainant that he or she has sixty (60) days to file a statement with the Court objecting to or supporting the lawyer's petition.

(d) Publication of Notice of Petition.

When a lawyer files a petition for reinstatement or readmission, the Clerk of the Supreme Court shall publish a notice of the petition in a newspaper of general circulation in Guam, at the expense of the petitioning lawyer, and serve a copy of the notice upon the Guam Bar. The notice shall inform members of the bar and the public about the application for reinstatement or readmission, and shall request that any individuals file with the Court notice of their opposition or concurrence.

(e) Criteria for Reinstatement and Readmission.

A lawyer may be reinstated or readmitted only if the lawyer meets each of the following criteria, or, if not, presents good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted:

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(1) The lawyer has fully complied with the terms and conditions of all prior disciplinary orders except to the extent that they are abated under Rule 26.

(2) The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.

(3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless the lawyer has pursued appropriate rehabilitative treatment.

(4) The lawyer recognizes the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred.

(5) The lawyer has not engaged in any other professional misconduct since suspension or disbarment.

(6) Notwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite honesty and integrity to practice law.

(7) The lawyer has kept informed about recent developments in the law and is competent to practice.

(8) In addition, a lawyer who has been disbarred must pass the Guam bar examination and the character and fitness examination.

(f) Review of Petition.

Upon receiving a lawyer's petition for reinstatement or readmission, Regulation Counsel shall promptly either:

(1) advise the lawyer and the Court that the Investigative Committee will stipulate to the lawyer's reinstatement or readmission, or

(2) advise the lawyer and the Court that the Investigative Committee opposes reinstatement or readmission and request the Court to set a hearing.

(g) Hearing; Report.

Upon receipt of Regulation Counsel's request for a hearing, or upon its own determination, the Court may conduct a hearing at which the lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met each of the criteria in paragraph (e) of this rule or, if not, that there is good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted.

(h) Decision as to Reinstatement or Readmission.

The Court shall consider the petition, any statement by Regulation Counsel, the evidence presented at any hearing, and any stipulation agreed to by the lawyer and Regulation Counsel. If the Court finds that the lawyer has complied with each of the criteria of paragraph (e) of this rule, or has presented good and sufficient reason for failure to comply, the Court shall reinstate or readmit the lawyer. If the Court reinstates or readmits the lawyer, the Court shall set forth the grounds for its decision in writing; if the Court denies reinstatement or readmission, the Court shall set forth the grounds for its decision in writing and shall identify the period after which the lawyer may reapply. Generally, no lawyer should

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

be permitted to reapply for reinstatement or readmission within one year following an adverse judgment upon a petition for reinstatement or readmission.

(i) Conditions of Reinstatement or Readmission.

The Court may impose conditions on a lawyer's reinstatement or readmission. The conditions shall be imposed in cases where the lawyer has met the burden of proof justifying reinstatement or readmission, but the Court reasonably believes that further precautions should be taken to protect the public.

The Court may impose any conditions that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement or readmission. Passing the bar examination and the character and fitness examination shall be conditions to readmission following disbarment. The conditions may also include any of the following: limitation upon practice (to one area of law or through association with an experienced supervising lawyer); participation in continuing legal education courses; monitoring of the lawyer's practice (for compliance with trust account rules, accounting procedures, or office management procedures); abstention from the use of drugs or alcohol; active participation in Alcoholics Anonymous or other alcohol or drug rehabilitation program; or monitoring of the lawyer's compliance with any other orders (such as abstinence from alcohol or drugs, or participation in alcohol or drug rehabilitation programs). If the monitoring lawyer determines that the reinstated or readmitted lawyer's compliance with any condition of reinstatement or readmission is unsatisfactory and that there exists a potential for harm to the public, the monitoring lawyer shall notify the Court and, where necessary to protect the public, the lawyer may be suspended from practice under Rule 20(b).

(j) Reciprocal Reinstatement or Readmission.

Where the Court has imposed a suspension or disbarment solely on the basis of imposition of discipline in another jurisdiction, and where the lawyer gives notice to the Court that he or she has been reinstated or readmitted in the other jurisdiction, the Court shall determine whether the lawyer should be reinstated or readmitted in Guam. Unless Regulation Counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the Court shall reinstate or readmit a lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred.

(k) Waiver of Psychotherapist-Patient Privilege.

The filing of a petition for reinstatement by a lawyer suspended for incompetency or incapacity shall constitute a waiver of any psychotherapist-patient privilege with respect to the treatment of the lawyer during the period of his/her disability. In the petition for reinstatement, the lawyer shall be required to disclose the name and address of every psychiatrist, psychologist, physician, hospital or other institution involved in the examination or treatment for the condition upon which he/she was determined disabled. The lawyer shall furnish the Investigative Committee with written consent for each psychiatrist, psychologist, physician, hospital, or other institution to divulge such information and records as requested by the Committee or Regulation Counsel.

SOURCE: MRLDE 25; Court Rule 20(h) (subsection (k))

Rule 26. Abatement or Modification of Conditions of Discipline, Reinstatement, or Readmission.

Where the Court has imposed conditions in an order of discipline or in an order of reinstatement or readmission, the lawyer may request of the Court an order of abatement discharging the lawyer from the

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

obligation to comply with the conditions, or an order modifying the conditions. The lawyer may so request either prior to or as part of lawyer's petition for reinstatement or readmission. The Court may grant the request if the lawyer shows by clear and convincing evidence that the lawyer has made a timely, good faith effort to meet the conditions but it is impossible to fulfill the conditions.

SOURCE: MRLDE 26

Rule 27. Notice to Clients, Adverse Parties, and Other Counsel.

(a) Recipients of Notice; Contents.

Within ten (10) days after the date of the Court order imposing discipline, transfer to disability inactive status, or allowing resignation pursuant to Rule 24, a respondent disbarred, transferred to disability inactive status, placed on interim suspension, allowed to resign pursuant to Rule 24, suspended for more than thirty (30) days, or who has been administratively suspended pursuant to Rule 8(c) for more than thirty (30) days shall notify or cause to be notified by registered or certified mail, return receipt requested,

(1) all clients being represented in pending matters;

(2) any co-counsel in pending matters; and

(3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the Court and that the respondents therefore disqualified to act as a lawyer after the effective date of the order. The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

(b) Special Notice.

The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

(c) Duty to Maintain Records.

The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs (a) and (b), and shall make those records available to Regulation Counsel on request.

(d) Return of Client Property.

The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

(e) Effective Date of Order; Refund of Fees.

Orders imposing disbarment, suspension, transfers to disability inactive status, or allowing resignation pursuant to Rule 24 are effective on a date fifteen (15) days after the date of the order, except where the Court orders a later effective date or finds that immediate disbarment, suspension, transfer to disability or inactive status, or resignation is necessary to protect the public. The respondent shall refund within ten (10) days after entry of the order any part of any fees paid in advance that has not been earned.

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(f) Withdrawal from Representation.

In the event the client does not obtain another lawyer before the effective date of the disbarment, suspension, transfer to disability or inactive status, resignation pursuant to Rule 24, or administrative suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

(g) New Representation Prohibited.

Prior to the effective date of the order, if not immediate, the respondent shall agree not to undertake any new legal matters between service of the order and the effective date of the discipline.

(h) Affidavit Filed with Court.

Within ten (10) days after the effective date of a disbarment or suspension order, or order of transfer to disability inactive status, the respondent shall file with this Court an affidavit showing:

- (1) Compliance with the provisions of the order and with these rules;
- (2) All other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;
- (3) Residence or other addresses where communications may thereafter be directed; and
- (4) Service of a copy of the affidavit upon Regulation Counsel.

SOURCE: MRLDE 27

Rule 27.1. Employment of Disbarred, Suspended, Resigned, or Involuntary Inactive Lawyer.

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors, and consultants, regardless of whether any compensation is paid;
- (2) “Involuntary inactive lawyer” means a lawyer who is ineligible to practice law as a result of action taken by the Court pursuant to these Rules; and
- (3) “Resigned lawyer” means a lawyer who resigned from the Guam Bar with a disciplinary matter pending.

(b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, resigned, or involuntary inactive lawyer to perform the following on behalf of the lawyer’s client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless authorized by the Court and performed on a pro bono basis;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse, or otherwise handle the client’s funds; or

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

(6) Engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntary inactive lawyer to perform research, drafting, or other activities that do not constitute the practice of law, including but not limited to:

(1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) Direct communication with the client or third parties regarding matters such as scheduling, updates, confirmation of receipt or sending of correspondence and messages; or

(3) accompanying an active lawyer in attending a deposition or other discovery matter for the limited purpose of providing assistance to the active lawyer who will appear as the representative of the client.

(d) When employing a person the lawyer knows or reasonably should know is a disbarred, suspended, resigned, or involuntary inactive lawyer, the lawyer shall serve upon the Clerk of the Supreme Court and Regulation Counsel written notice of the employment, including a full description of the person's current bar status. The written notice shall also list the activities prohibited in paragraph (b) of this rule and state that the disbarred, suspended, resigned, or involuntary inactive lawyer will not perform such activities. The lawyer shall serve similar written notice upon each client on whose specific matter such person will work, prior to or when employing or assigning such person to work on the client's specific matter. The lawyer shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy of the client's written notice for two years following termination of the disbarred, suspended, resigned, or involuntary inactive lawyer's employment with the lawyer.

(e) Upon terminating the employment of the disbarred, suspended, resigned, or involuntary inactive lawyer, the employing lawyer shall promptly serve upon the Clerk of the Supreme Court and Regulation Counsel written notice of the termination.

SOURCE: California Rule of Professional Conduct 1-311

Rule 28. Appointment of Counsel to Protect Clients' Interests when Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.

(a) Inventory of Lawyer Files. If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the Court, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

(b) Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the Court order appointing the lawyer to make the inventory.

(c) In addition to the assessment of costs under Rule 10(a), the Court may assess against a respondent any reasonable costs incurred by a lawyer appointed under this rule that were incurred because of the suspension, disbarment, disability, or resignation of the respondent.

SOURCE: MRLDE 28

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

Rule 29. [RESERVED].

Rule 30. Maintenance of Trust Funds in an Insured Financial Institution; Overdraft Notification; Verification of Bank Accounts.

(a) Clearly Identified Trust Accounts in an Insured Financial Institution Required.

(1) Lawyers who practice law in Guam shall deposit all funds held in trust in this jurisdiction in accordance with Guam Rule of Professional Conduct 1.15(a) in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts,” and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in an insured financial institution.

(2) Every lawyer practicing or admitted to practice in Guam shall, within ten (10) days of receiving notice of any overdraft relative to any trust account, provide a copy of the notice to Regulation Counsel.

(3) Every lawyer practicing or admitted to practice in Guam shall, as a condition thereof, be conclusively deemed to have consented to the Investigative Committee and Regulation Counsel being provided, upon request, with a copy of any overdraft notification relative to any trust account maintained by the lawyer directly from the financial institution.

(4) Every lawyer engaged in the practice of law in Guam shall maintain and preserve for a period of at least six years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, cancelled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings, or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

(b) Generally.

Whenever the Investigative Committee has probable cause to believe that bank accounts of a lawyer that contain, should contain, or have contained funds belonging to clients have not been properly maintained or that the funds have not been properly handled, the Investigative Committee may authorize an investigation by Regulation Counsel for the purpose of verifying the accuracy and integrity of all bank accounts maintained by the lawyer.

(c) Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer’s records insofar as is consistent with these rules and the lawyer-client privilege.

SOURCE: MRLDE 29 & 30.

Rule 31. [RESERVED]

Rule 32. Statute of Limitations.

A complaint against a lawyer shall be filed within six years of the time that the complainant discovers or reasonably should have discovered the misconduct, or in the case of a complainant who was a minor or incapacitated at the time of the alleged conduct, within six years reaching the age of majority

**GUAM RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT AND DISABILITY PROCEEDINGS**

or regaining capacity, respectively. There shall be no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment on the part of the lawyer.

SOURCE: MRLDE 32; Committee Rule 7.

Rule 33. Failure to Answer/Failure to Appear.

(a) Failure to Answer.

(1) If respondent fails to answer, the Hearing Panel shall enter a default of the respondent in the same manner as in civil actions, and thereafter, notwithstanding any other provisions of these rules, respondent shall not be entitled to further notice or to appear and be heard at subsequent proceedings. Thereafter, the sole issue to be determined by the Hearing Panel shall be the nature of its recommendation of discipline to the Court after consideration of any facts in aggravation or mitigation of the respondent's fault.

(2) For good cause shown within a reasonable time, the Hearing Panel or the Court may set aside respondent's default, with or without conditions, and make such orders as to further proceedings as appropriate.

(b) Failure to Appear.

If respondent should fail to appear when specifically so ordered by the Hearing Panel, the respondent shall be deemed to have admitted the factual allegations that were to be the subject of such appearance and/or a concession to any motion or recommendations to be considered at such appearance. The Hearing Panel shall not, absent good cause, continue or delay proceedings due to the respondent's failure to appear.

SOURCE: MRLDE 33; Committee Rule 21 (subsection (a))

Rule 34. The Court hereby adopts the *ABA Standards for Imposing Lawyer Sanctions*, as approved February 1986, and as amended February 1992, and attached hereto as Appendix 1.

STANDARDS FOR IMPOSING LAWYER SANCTIONS

AS APPROVED, FEBRUARY 1986
AND AS AMENDED, FEBRUARY 1992

I. PREFACE

A. Background

In 1979, the American Bar Association published the Standards for Lawyer Discipline and Disability Proceedings. [The Standards for Lawyer Discipline and Disability Proceedings have been superseded by the ABA Model Rules for Lawyer Disciplinary Enforcement (MRLDE)]¹ That book [the Standards] was a result of work by the Joint Committee on Professional Discipline of the American Bar Association. The Joint Committee was composed of members of the Judicial Administration Division and the Standing Committee on Professional Discipline of the American Bar Association. The task of the Joint Committee was to prepare standards for enforcement of discipline in the legal community.

The 1979 standards have been most helpful, and have been used by numerous jurisdictions as a frame of reference against which to compare their own disciplinary systems. Many jurisdictions have modified their procedures to comport with these suggested standards, and the Standing Committee on Professional Discipline of the American Bar Association has assisted state disciplinary systems in evaluating their programs in light of the approved standards.

It became evident that additional analysis was necessary in one important area -- that of appropriate sanctions for lawyer misconduct. The American Bar Association Standards for Lawyer Discipline and Disability Proceedings (hereinafter "Standards for Lawyer Discipline") do not attempt to recommend the type of discipline to be imposed in any particular case. The Standards merely state that the discipline to be imposed "should depend upon the facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances" (Standard 7.1) [See generally Rule 10, ABA MRLDE].

For lawyer discipline to be truly effective, sanctions must be based on clearly developed standards. Inappropriate sanctions can undermine the goals of lawyer discipline: sanctions which are too lenient fail to adequately deter misconduct and thus lower public confidence in the profession; sanctions which are too onerous may impair confidence in the system and deter lawyers from reporting ethical violations on the part of other lawyers. Inconsistent sanctions, either within a jurisdiction or among jurisdictions, cast doubt on the efficiency and the basic fairness of all disciplinary systems.

As an example of this problem of inconsistent sanctions, consider the range in levels of sanctions imposed for a conviction for failure to file federal income taxes. In one jurisdiction, in 1979, a lawyer who failed to file income tax returns for one year was suspended for one year,² while, in 1980, a lawyer who failed to file income tax returns for two years was merely censured.³ Within a two-year period, the sanctions imposed on lawyers who converted their clients' funds included disbarment,⁴ suspension,⁵ and censure.⁶ The inconsistency of sanctions imposed by different jurisdictions for the same misconduct is even greater.

An examination of these cases illustrates the need for a comprehensive system of sanctions. In many cases, different sanctions are imposed for the same acts of misconduct, and the courts rarely provide any explanation for the selection of sanctions. In other cases, the courts may give reasons for their decisions, but their statements are too general to be useful. In still other cases, the courts may list specific factors to support a certain result, but they do not state whether these factors must be considered in every discipline case, nor do they explain whether these factors are entitled to equal weight.

The Joint Committee on Professional Sanctions (hereinafter “Sanctions Committee”) was formed to address these problems by formulating standards to be used in imposing sanctions for lawyer misconduct. The Sanctions Committee was composed of members from the Judicial Administration Division and the Standing Committee on Professional Discipline. The mandate given was ambitious: the Committee was to examine the current range of sanctions imposed and to formulate standards for the imposition of appropriate sanctions.

In addressing this task, the Sanctions Committee recognized that any proposed standards should serve as a model which sets forth a comprehensive system of sanctions, but which leaves room for flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. These standards are designed to promote thorough, rational consideration of all factors relevant to imposing a sanction in an individual case. The standards attempt to ensure that such factors are given appropriate weight in light of the stated goals of lawyer discipline, and that only relevant aggravating and mitigating circumstances are considered at the appropriate time. Finally, the standards should help achieve the degree of consistency in the imposition of lawyer discipline necessary for fairness to the public and the bar.

While these standards will improve the operation of lawyer discipline systems, there is an additional factor which, though not the focus of this report, cannot be overlooked. In discussing sanctions for lawyer misconduct, this report assumes that all instances of unethical conduct will be brought to the attention of the disciplinary system. Experience indicates that such is not the case. In 1970, the ABA Special Committee on Evaluation of Disciplinary Enforcement (the Clark Committee), was charged with the responsibility for evaluating the effectiveness of disciplinary enforcement systems. The Clark Committee concluded that one of the most significant problems in lawyer discipline was the reluctance of lawyers and judges to report misconduct.⁷ That same problem exists today. It cannot be emphasized strongly enough that lawyers and judges must report unethical conduct to the appropriate disciplinary agency.⁸ Failure to render such reports is a disservice to the public and the legal profession.

Judges in particular should be reminded of their obligation to report unethical conduct to the disciplinary agencies. Under Rule 2.15 of the ABA Model Code of Judicial Conduct, a judge who receives information indicating a substantial likelihood that another judge or a lawyer has violated the applicable rules of professional conduct is obligated to take appropriate action. This action includes making a report of the violation to the appropriate authority when the violation raises a substantial question about the judge’s fitness or the lawyer’s honesty trustworthiness or fitness.⁹ Frequently, judges take the position that there is no such need and that errant behavior of lawyers can be remedied solely by use of contempt proceedings and other alternative means. It must be emphasized that the goals of lawyer discipline are not properly and fully served if the judge who observes unethical conduct simply deals with it on an ad hoc basis. It may be proper and wise for a judge to use contempt powers in order to assure that the court maintains control of the proceeding and punishes a lawyer for abusive or obstreperous conduct in the court’s presence. However, the lawyer discipline system is in addition to and serves purposes different from contempt powers and other mechanisms available to the judge. Only if all lawyer misconduct is in fact reported to the appropriate disciplinary agency can the legal profession have confidence that consistent sanctions are imposed for similar misconduct.

Consistency of sanctions depends on reporting of other types as well. The American Bar Association Center for Professional Responsibility has established a “National Lawyer Regulatory Data Bank” which collects statistics on the nature of ethical violations and sanctions imposed in lawyer discipline cases in all jurisdictions. The information available from the Data Bank is only as good as the reports which reach it. It is vital that the Data Bank promptly receive complete, accurate and detailed information with regard to all discipline cases.

Finally, the purposes of lawyer sanctions can best be served, and the consistency of those sanctions enhanced, if courts and disciplinary agencies throughout the country articulate the reasons for sanctions

imposed. Courts of record that impose lawyer discipline do a valuable service to the legal profession and the public when they issue opinions in lawyer discipline cases that explain the imposition of a specific sanction. The effort of the Sanctions Committee was made easier by the well-reasoned judicial opinions that were available. At the same time, the Sanctions Committee was frustrated by the fact that many jurisdictions do not publish lawyer discipline decisions, and that even published decisions are often summary in nature, failing to articulate the justification for the sanctions imposed.

[The Standards for Imposing Lawyer Sanctions were amended by the ABA House of Delegates on February 4, 1992. The amendments were proposed by the ABA Standing Committee on Professional Discipline as a result of its ongoing review of the courts' use of the Standards in lawyer disciplinary cases to assure their consistency with the developing case law.]

B. Methodology

The Standards for Imposing Lawyer Sanctions have been developed after an examination of all reported lawyer discipline cases from 1980 to June, 1984, where public discipline was imposed.¹⁰ In addition, eight jurisdictions, which represent a variety of disciplinary systems as well as diversity in geography and population size, were examined in depth. In these jurisdictions - Arizona, California, the District of Columbia, Florida, Illinois, New Jersey, North Dakota, and Utah - all published disciplinary cases from January, 1974 through June, 1984, were analyzed. In each case, data were collected concerning the type of offense, the sanction imposed, the policy considerations identified, and aggravating or mitigating circumstances noted by the court.¹¹

These data were examined to identify the patterns that currently exist among courts imposing sanctions and the policy considerations that guide the courts. In general, the courts were consistent in identifying the following policy considerations: protecting the public, ensuring the administration of justice, and maintaining the integrity of the profession. In the words of the California Supreme Court: "The purpose of a disciplinary proceeding is not punitive but to inquire into the fitness of the lawyer to continue in that capacity for the protection of the public, the courts, and the legal profession."¹² However, the courts failed to articulate any theoretical framework for use in imposing sanctions.

In attempting to develop such a framework, the Sanctions Committee considered a number of options. The Committee considered the obvious possibility of identifying each and every type of misconduct in which a lawyer could engage, then suggesting either a recommended sanction or a range of recommended sanctions to deal with that particular misconduct. The Sanctions Committee unanimously rejected that option as being both theoretically simplistic and administratively cumbersome.¹³

The Sanctions Committee next considered an approach that dealt with general categories of lawyer misconduct and applied recommended sanctions to those types of misconduct depending on whether or not -- and to what extent -- the misconduct resulted from intentional or malicious acts of the lawyer. There is some merit in that approach; certainly, the intentional or unintentional conduct of the lawyer is a relevant factor. Nonetheless, that approach was also abandoned after the Sanctions Committee carefully reviewed the purposes of lawyer sanctions. Solely focusing on the intent of the lawyer is not sufficient, and proposed standards must also consider the damage which the lawyer's misconduct causes to the client, the public, the legal system, and the profession. An approach which looked only at the extent of injury was also rejected as being too narrow.

The Committee adopted a model that looks first at the ethical duty and to whom it is owed, and then at the lawyer's mental state and the amount of injury caused by the lawyer's misconduct. (See Theoretical Framework, p. 5, for a detailed discussion of this approach.) Thus, one will look in vain for a section of this report which recommends a specific sanction for, say, improper contact with opposing parties who are represented by counsel [Rule 4.2/DR 7-104(A)(1)],¹⁴ or for any other specific misconduct. What one will

find, however, is an organizational framework that provides recommendations as to the type of sanction that should be imposed based on violations of duties owed to clients, the public, the legal system, and the profession.

To provide support for this approach, the Sanctions Committee has offered as much specific data and guidance as possible from reported cases.¹⁵ Thus, with regard to each category of misconduct, the report provides the following:

- discussion of what types of sanctions have been imposed for similar misconduct in reported cases;
- discussion of policy reasons which are articulated in reported cases to support such sanctions; and,
- finally, a recommendation as to the level of sanction imposed for the given misconduct, absent aggravating or mitigating circumstances.

While it is recognized that any individual case may present aggravating or mitigating factors which would lead to the imposition of a sanction different from that recommended, these standards present a model which can be used initially to categorize misconduct and to identify the appropriate sanction. The decision as to the effect of any aggravating or mitigating factors should come only after this initial determination of the sanction.

The Sanctions Committee also recognized that the imposition of a sanction of suspension or disbarment does not conclude the matter. Typically, disciplined lawyers will request reinstatement or readmission. While this report does not include an in-depth study of reinstatement and readmission cases, a general recommendation concerning standards for reinstatement and readmission appears as Standard 2.10.

II. THEORETICAL FRAMEWORK

These standards are based on an analysis of the nature of the professional relationship. Historically, being a member of a profession has meant that an individual is some type of expert, possessing knowledge of high instrumental value such that the members of the community give the professional the power to make decisions for them. In the legal profession, the community has allowed the profession the right of self-regulation. As stated in the Preamble to the ABA Model Rules of Professional Conduct (hereinafter "Model Rules"), "[t]he legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."¹⁶

This view of the professional relationship requires lawyers to observe the ethical requirements that are set out in the Model Rules (or applicable standard in the jurisdiction where the lawyer is licensed). While the Model Rules define the ethical guidelines for lawyers, they do not provide any method for assigning sanctions for ethical violations. The Committee developed a model which requires a court imposing sanctions to answer each of the following questions:

- (1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)
- (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or

negligently?)

- (3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?) and
- (4) Are there any aggravating or mitigating circumstances?

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. These include:

- (a) the duty of loyalty which (in the terms of the Model Rules and Code of Professional Responsibility) includes the duties to:
 - (i) preserve the property of a client [Rule 1.15/DR9-102],
 - (ii) maintain client confidences [Rule 1.6/DR4-101], and
 - (iii) avoid conflicts of interest [Rules 1.7 through 1.13, 2.2, 3.7, 5.4(c) and 6.3/ DR5-101 through DR 5-105, DR9-101];
- (b) the duty of diligence [Rules 1.2, 1.3, 1.4/DR6-101(A)(3)];
- (c) the duty of competence [Rule 1.1/DR6-101(A)(1) & (2)]; and
- (d) the duty of candor [Rule 8.4(c)/DR 1-102(A)(4) & DR7-101(A)(3)].

In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to be able to trust lawyers to protect their property, liberty, and their lives. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice [Rules 8.2, 8.4(b)&(c)/DR 1-102(A)(3)(4)&(5), DR 8-101 through DR 8-103, DR 9-101(c)].

Lawyers also owe duties to the legal system. Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot create or use false evidence, or engage in any other illegal or improper conduct [Rules 3.1 through 3.6, 3.9, 4.1 through 4.4, 8.2, 8.4(d)(e)&(f)/DR7-102 through DR7-110].

Finally, lawyers owe duties to the legal profession. Unlike the obligations mentioned above, these duties are not inherent in the relationship between the professional and the community. These duties do not concern the lawyer's basic responsibilities in representing clients, serving as an officer of the court, or maintaining the public trust, but include other duties relating to the profession. These ethical rules concern:

- (a) restrictions on advertising and recommending employment [Rules 7.1 through 7.5/DR2-101 through 2-104];
- (b) fees [Rules 1.5, 5.4 and 5.6/DR2-106, DR2-107, and DR3-102];
- (c) assisting unauthorized practice [Rule 5.5/DR3-101 through DR3-103];

(d) accepting, declining, or terminating representation [Rules 1.2, 1.14, 1.16/DR2-110]; and

(e) maintaining the integrity of the profession [Rules 8.1&8.3/DR1-101 and DR 1-103].

The mental states used in this model are defined as follows. The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

The extent of the injury is defined by the type of duty violated and the extent of actual or potential harm. For example, in a conversion case, the injury is determined by examining the extent of the client's actual or potential loss. In a case where a lawyer tampers with a witness, the injury is measured by evaluating the level of interference or potential interference with the legal proceeding. In this model, the standards refer to various levels of injury: "serious injury," "injury," and "little or no injury." A reference to "injury" alone indicates any level of injury greater than "little or no" injury.

As an example of how this model works, consider two cases of conversion of a client's property. After concluding that the lawyers engaged in ethical misconduct, it is necessary to determine what duties were breached. In these cases, each lawyer breached the duty of loyalty owed to clients. To assign a sanction, however, it is necessary to go further, and to examine each lawyer's mental state and the extent of the injuries caused by the lawyers' actions.

In the first case, assume that the client gave the lawyer \$100 as an advance against the costs of investigation. The lawyer took the money, deposited it in a personal checking account, and used it for personal expenses. In this case, where the lawyer acted intentionally and the client actually suffered an injury, the most severe sanction - disbarment - would be appropriate.

Contrast this with the case of a second lawyer, whose client delivered \$100 to be held in a trust account. The lawyer, in a hurry to get to court, neglected to inform the secretary what to do with these funds and they were erroneously deposited into the lawyer's general office account. When the lawyer needed additional funds he drew against the general account. The lawyer discovered the mistake, and immediately replaced the money. In this case, where there was no actual injury and a potential for only minor injury, and where the lawyer was merely negligent, a less serious sanction should be imposed. The appropriate sanction would be either reprimand or admonition.

In each case, after making the initial determination as to the appropriate sanction, the court would then consider any relevant aggravating or mitigating factors (Standard 9). For example, the presence of aggravating factors, such as vulnerability of the victim or refusal to comply with an order to appear before the disciplinary agency, could increase the appropriate sanction. The presence of mitigating factors, such as absence of prior discipline or inexperience in the practice of law, could make a lesser sanction appropriate.

While there may be particular cases of lawyer misconduct that are not easily categorized, the standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct. Rather, the standards provide a theoretical framework to guide the courts in imposing sanctions. The ultimate sanction imposed will depend on the presence of any aggravating or mitigating factors in that particular situation. The standards thus are not analogous to criminal determinate sentences, but are guidelines which give courts the flexibility to select the appropriate sanction in each particular case of lawyer misconduct.

The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. Either a pattern of misconduct or multiple instances of misconduct should be considered as aggravating factors (see Standard 9.22).

III. STANDARDS FOR IMPOSING LAWYER SANCTIONS: BLACK LETTER RULES

For reference purposes, a list of the black letter rules is set out below.

DEFINITIONS

“Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury.

“Intent” is the conscious objective or purpose to accomplish a particular result.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

“Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

A. PURPOSE AND NATURE OF SANCTIONS

1.1 Purpose of Lawyer Discipline Proceedings.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

1.2 Public Nature of Lawyer Discipline.

Upon the filing and service of formal charges, lawyer discipline should be public, and disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.

1.3 Purpose of These Standards.

These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Model Rules of Professional Conduct (or applicable standard under the laws of the jurisdiction where the proceeding is brought). Descriptions in these standards of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of the Model Rules. The Standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

B. SANCTIONS

2.1 Scope

A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgement that the lawyer has engaged in professional misconduct.

2.2 Disbarment

Disbarment terminates the individual's status as a lawyer. Where disbarment is not permanent, procedures should be established for a lawyer who has been disbarred to apply for readmission, provided that:

- (1) no application should be considered for five years from the effective date of disbarment; and**
- (2) the petitioner must show by clear and convincing evidence:**
 - (a) successful completion of the bar examination;**
 - (b) compliance with all applicable discipline or disability orders or rules; and**
 - (c) rehabilitation and fitness to practice law.**

2.3 Suspension

Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. Generally, suspension should be for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years. Procedures should be established to allow a suspended lawyer to apply for reinstatement, but a lawyer who has been suspended should not be permitted to return to practice until he has completed a reinstatement process demonstrating rehabilitation, compliance with all applicable discipline or disability orders, and fitness to practice law.

2.4 Interim Suspension

Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes:

- (a) suspension upon conviction of a "serious crime" or,**

- (b) suspension when the lawyer's continuing conduct is or is likely to cause immediate and serious injury to a client or the public.

2.5 Reprimand

Reprimand, also known as censure or public censure, is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

2.6 Admonition

Admonition, also known as private reprimand, is a form of non-public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

2.7 Probation

Probation is a sanction that allows a lawyer to practice law under specified conditions. Probation can be imposed alone or in conjunction with a reprimand, an admonition or immediately following a suspension. Probation can also be imposed as a condition of readmission or reinstatement.

2.8 Other Sanctions and Remedies

Other sanctions and remedies which may be imposed include:

- (a) restitution,
- (b) assessment of costs,
- (c) limitation upon practice,
- (d) appointment of a receiver,
- (e) requirement that the lawyer take the bar examination or professional responsibility examination,
- (f) requirement that the lawyer attend continuing education courses, and
- (g) other requirements that the state's highest court or disciplinary board deems consistent with the purposes of lawyer sanctions.

2.9 Reciprocal Discipline

Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction.

2.10 Readmission and Reinstatement

In jurisdictions where disbarment is not permanent, procedures should be established to allow a disbarred lawyer to apply for readmission. Procedures should be established to allow a suspended lawyer to apply for reinstatement.

C. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS

3.0 Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty violated;**
- (b) the lawyer's mental state;**
- (c) the potential or actual injury caused by the lawyer's misconduct; and**
- (d) the existence of aggravating or mitigating factors.**

4.0 Violations of Duties Owed to Clients

4.1 Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.**
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.**
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.**
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.**

4.2 Failure to Preserve the Client's Confidences

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving improper revelation of information relating to representation of a client:

- 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.**
- 4.22 Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.**
- 4.23 Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.**

4.24 Admonition is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

4.3 Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or**
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or**
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.**

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

4.4 Lack of Diligence

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or**
- (b) a lawyer knowingly fails to perform services for a client and causes serious or**

potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

4.5 Lack of Competence

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

4.6 Lack of Candor

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent

to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

5.0 Violations of Duties Owed to the Public

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

5.2 Failure to Maintain the Public Trust

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence

improperly a government agency or official:

5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

5.23 Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

5.24 Admonition is generally appropriate when a lawyer in an official or governmental position engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

6.0 Violations of Duties Owed to the Legal System

6.1 False Statements, Fraud, and Misrepresentation

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

6.2 Abuse of the Legal Process

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

6.3 Improper Communications with Individuals in the Legal System

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law:

6.31 Disbarment is generally appropriate when a lawyer:

- (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or**
- (b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or**
- (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.**

6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes

injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

6.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

7.0 Violations of Other Duties as a Professional

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

8.0 Prior Discipline Orders

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving prior discipline.

8.1 Disbarment is generally appropriate when a lawyer:

- (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or**
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.**

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential

injury to a client, the public, the legal system, or the profession.

8.3 Reprimand is generally appropriate when a lawyer:

- (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or**
- (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.**

8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

9.0 Aggravation and Mitigation

9.1 Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

- (a) prior disciplinary offenses;**
- (b) dishonest or selfish motive;**
- (c) a pattern of misconduct;**
- (d) multiple offenses;**
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;**
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;**
- (g) refusal to acknowledge wrongful nature of conduct;**
- (h) vulnerability of victim;**
- (i) substantial experience in the practice of law;**

(j) indifference to making restitution;

(k) illegal conduct, including that involving the use of controlled substances.

9.3 Mitigation

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation.

Mitigating factors include:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems;

(d) timely good faith effort to make restitution or to rectify consequences of misconduct;

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(f) inexperience in the practice of law;

(g) character or reputation;

(h) physical disability;

(i) mental disability or chemical dependency including alcoholism or drug abuse when:

(1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;

(2) the chemical dependency or mental disability caused the misconduct;

(3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

(j) delay in disciplinary proceedings;

(k) imposition of other penalties or sanctions;

(l) remorse;

(m) remoteness of prior offenses.

9.4 Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;**
- (b) agreeing to the client's demand for certain improper behavior or result;**
- (c) withdrawal of complaint against the lawyer;**
- (d) resignation prior to completion of disciplinary proceedings;**
- (e) complainant's recommendation as to sanction;**
- (f) failure of injured client to complain.**