

**DISCIPLINARY RULES & PROCEDURES FOR
ATTORNEYS**

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1989

RULE 1. JURISDICTION.

Any attorney, trial counselor, or other person who practices law in the Republic of Palau is subject to these rules.

Nothing herein contained shall be construed to deny any Court of the Republic of Palau its inherent and statutory powers to maintain control over proceedings conducted before it.

For the sake of brevity, the word attorney as used herein shall mean a lawyer, trial counselor, or any other person who practices law in Palau. Also, masculine pronouns are used for brevity only; these rules apply to all attorneys.

RULE 2. GROUNDS FOR DISCIPLINARY ACTION.

An attorney may be subject to disciplinary action as provided by these rules for any of the following causes occurring within or outside the Republic of Palau.

- (a) The commission of any act involving moral turpitude, dishonesty, or corruption in the course of his conduct as an attorney or otherwise, and whether or not such act is a felony or misdemeanor. A conviction is not a condition precedent to disciplinary action.
- (b) Wilful disobedience or violation of a court order directing him to do or cease doing an act which he ought in good faith to do or forbear.
- (c) Violation of his oath or duties as an attorney.
- (d) Wilfully appearing without authority as an attorney for a party to an action or proceeding.
- (e) Misrepresenting or concealing a material fact in his application for admission to the bar or reinstatement.
- (f) Suspension, disbarment, or other disciplinary sanction by competent authority in any state, federal, or foreign jurisdiction.
- (g) (1) Practicing law with or in cooperation with a disbarred or suspended attorney, (2) maintaining an office for the practice of law in a

room or office used or occupied in part by a disbarred or suspended attorney, (3) permitting a disbarred or suspended attorney to use his name for the practice of law, (4) practicing law for or on behalf of a disbarred or suspended attorney, (5) practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not authorized to practice law.

(h) Any act or omission which violates the American Bar Association Model Rules of Professional Conduct and the amendments thereto.

(i) Engaging in the practice of law in the Republic of Palau without first being permitted to do so pursuant to the Rules of Admission.

RULE 3. TYPES OF DISCIPLINE.

Discipline may consist of:

- (a) disbarment,
- (b) suspension for not more than five years,
- (c) public censure,
- (d) private censure,
- (e) a fine, or
- (f) community service.

The Disciplinary Tribunal may, in the exercise of its discretion, suspend the imposition or execution of sanctions and place the respondent attorney on probation under conditions for up to five years. The cost of investigating and prosecuting the action may also be assessed against the respondent attorney in cases which do not result in dismissal.

RULE 4. INITIAL PROCESSING OF COMPLAINTS.[†]

- (a) All complaints concerning violations of these rules shall be referred to the Chief Justice or his designee. The Chief Justice or his designee may

[†] Editor's Note: Rule 4 reads as amended May 31, 1993 and March 18, 1994.

dismiss the complaint if he determines it is plainly without merit. If the Chief Justice or his designee determines further action is justified, he shall appoint a Disciplinary Counsel to investigate the complaint and prosecute the same before the Disciplinary Tribunal. If the Chief Justice or his designee appoints a Disciplinary Counsel he shall also appoint a Disciplinary Tribunal to decide the merits of the complaint.

(b) Upon his appointment the Disciplinary Counsel shall forthwith notify the respondent attorney of the substance of the complaint and permit him to submit evidence and argument relevant thereto. He shall investigate to the extent necessary the allegations of the complaint. He shall submit within thirty days of his appointment a written report of his findings and recommendations to the Disciplinary Tribunal. For good cause shown the Tribunal may grant an extension of time for filing of the report.

(c) Where a complaint is filed asserting that an attorney has violated these rules by his conduct in the prosecution or defense of a matter then pending in the Trial Division of the Supreme Court or of an appeal then pending in the Appellate Division of the Supreme Court, that complaint shall be referred in the first instance to the Justice (or, in the case of an appeal, the Presiding Justice of the panel) before whom the matter is pending. With respect to matters pending before an Associate Justice, within fifteen days of the receipt of the complaint, that Justice shall recommend to the Chief Justice whether (i) the complaint should be processed as set forth in part (a) above; (ii) the processing of the complaint should be deferred pending the resolution of the matter out of which the complaint arose; or (iii) the complaint should be dismissed. With respect to matters pending before the Chief Justice, or upon the recommendation of an Associate Justice, the Chief Justice shall act in his discretion in accordance with one of the three alternatives described in the preceding sentence.

RULE 5. ACTION BY THE DISCIPLINARY TRIBUNAL.

(a) Except as otherwise herein provided, proceedings before the Disciplinary Tribunal shall be governed by the Republic of Palau Rules of Civil Procedure.

(b) Upon receipt of the Disciplinary Counsel's report, the Tribunal shall, within seven days, determine what course of action to take. If the Tribunal determines that the complaint is unfounded, trivial, or otherwise lacking in merit, it shall dismiss the complaint and notify the respondent forthwith. If it finds that the complaint appears to have merit, it shall direct the Disciplinary Counsel to file a formal complaint within seven days and shall schedule the matter for a formal hearing within thirty days.

(c) The formal complaint and notice of hearing shall be served on the respondent attorney, who shall file his answer within twenty days. Failure to file a timely answer shall constitute an admission that the complaint is true.

(d) The formal hearing shall be held within the Republic of Palau and shall be closed to the public, unless the respondent attorney requests otherwise.

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

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

(g) The Tribunal shall render ^(F) its decision within 20 days of the conclusion of the hearing. If the Tribunal finds that the allegations of misconduct are true, it shall impose an appropriate sanction or combination of sanctions pursuant to Rule 3 hereof. In considering what would be an appropriate disposition of the case, the Tribunal may take into account any prior disciplinary actions involving the respondent attorney.

(h) The decision of the Disciplinary Tribunal shall be final.

RULE 6. REFUSAL OF COMPLAINANT TO PROCEED.

Neither unwillingness of a complainant to sign a complaint or to otherwise prosecute a charge for any reason, including settlement between the complainant and

the respondent attorney, or restitution by the respondent attorney to the complainant, shall, in itself, justify abatement of the processing of any complaint.

RULE 7. RELATED PENDING CIVIL OR CRIMINAL LITIGATION.

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

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

RULE 8. SERVICE.

Service upon the respondent of the formal complaint shall be personal service by a person or agency authorized by the Disciplinary Tribunal.

RULE 9. SUBPOENAS AND WITNESSES.

(a) Any member of the Disciplinary Tribunal may issue subpoenas to compel the attendance of the respondent attorney or of a witness, or the production of books or documents at the taking of a deposition or at a hearing before the Disciplinary Tribunal.

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

(c) There shall be no discovery proceedings except upon the order of the Disciplinary Tribunal.

RULE 10. CRIMINAL CONVICTION.

(a) Upon the filing with the Chief Justice of a certificate of a Clerk or Court demonstrating that an attorney has been convicted (certificate of conviction) of a crime which is a felony, or if the act had been committed in the Republic of Palau would have been a felony or which involves

moral turpitude, dishonesty or corruption, pending final disposition of the disciplinary procedure to be commenced upon such conviction, the Chief Justice shall enter an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial or otherwise, regardless of the pendency of an appeal.

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

(c) Upon the receipt of a certificate of a conviction of an attorney of a crime described in (a) above, even if the attorney is not restrained from the practicing of law, the Chief Justice shall refer the matter thereafter to a Disciplinary Tribunal as provided in Rule 4, and the Tribunal shall institute a hearing as provided in Rule 5 in which the sole issue to be determined shall be the extent of the discipline to be imposed, provided the proceedings so instituted shall not be brought to hearing until the judgment of conviction is final, unless the respondent shall request.

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

RULE 11. RECIPROCAL DISCIPLINE.

(a) All attorneys, subject to the provisions of these rules, shall upon being subjected to professional disciplinary action in another jurisdiction

promptly inform the Chief Justice of such action. Upon being informed that an attorney, subjected to discipline in another jurisdiction, the Chief Justice shall obtain a certified copy of such disciplinary order.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in the Republic of Palau has been disciplined in another jurisdiction, the Chief Justice shall forthwith issue a notice directed to the attorney containing:

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

(c) Upon the expiration of the thirty (30) days from the service of notice issued pursuant to the provisions of (b) above, the Chief Justice shall impose the identical discipline, unless the attorney requests a hearing. If a hearing is requested, a Disciplinary Tribunal will be designated in accordance with Rule 4. The Disciplinary Tribunal shall impose the same discipline, unless the respondent clearly demonstrates:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute deprivation of due process; or
- (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Tribunal could not, consistent with its duties, accept as final the conclusion on that subject; or
- (3) that the misconduct established warrants substantially different discipline in the Republic of Palau. Where the Tribunal determines that any of said elements exist, it shall enter such other orders as it deems appropriate.

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

misconduct for the purpose of a disciplinary proceeding in the Republic of Palau.

RULE 12. DISBARRED OR SUSPENDED ATTORNEYS.

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

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

(c) Orders imposing suspension ^{or} of disbarment shall be effective thirty (30) days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainers or engage as an attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date, he may wind upon and complete on behalf of any client all matters which were pending on the entry date.

(d) Within ten (10) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this Court an affidavit showing:

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

(2) that he has notified all other state, territorial, federal and administrative jurisdictions to which he is admitted to practice of the disciplinary action as may be required by the rules of such jurisdiction(s). Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

(e) The Chief Justice shall cause a notice of the suspension or disbarment to be published in a newspaper or general circulation in the Republic of Palau.

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

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

RULE 13. REINSTATEMENT.

(a) No suspended or disbarred attorney may resume practice until reinstated by order of a Disciplinary Tribunal.

(b) Any person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least two (2) years from the effective date of disbarment. Any attorney suspended from practicing may not apply for reinstatement until the expiration of at least one-half of the period of suspension.

(c) Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Chief Justice. The Chief Justice shall designate a Disciplinary Tribunal which shall set the matter for hearing within thirty days. At such hearing, the petitioner shall have the burden of

demonstrating that he is qualified to practice law in the Republic of Palau and worthy of the Court's trust and confidence. At the conclusion of the hearing, the Disciplinary Tribunal shall enter an appropriate order within fifteen days.

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

RULE 14. CUMULATIVE VIOLATIONS.

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

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

RULE 15. UNAUTHORIZED PRACTICE OF LAW.

Any attorney or person who practices law in the Republic of Palau without being admitted to practice law in the Republic of Palau, or any attorney who practices law in Palau after being disbarred or suspended shall be held in contempt of court and subject to the sanctions pertaining thereto.

RULE 16. EFFECTIVE DATE.

The disciplinary rules and procedures supersede the existing disciplinary rules and procedures for attorneys and trial assistants practicing in the Courts of the Republic of Palau, to wit: The Trust Territory High Court Disciplinary Rules and Procedures. Provided, however, that any pending disciplinary matters before the Supreme Court prior to the effective date of these disciplinary rules and procedures shall be governed and disposed of pursuant to Trust Territory High Court Disciplinary Rules and Procedures.

These disciplinary rules and procedures shall take effect on December 1, 1989.

These disciplinary rules and procedures may be amended by the Chief Justice and three (3) Associate Justice of the Supreme Court of the Republic of Palau.

Promulgated pursuant to Section 14 of Article 10 of the Constitution of the Republic of Palau.
