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**IN THE SUPREME COURT OF GUAM**

SUPREME COURT  
OF GUAM

**RE: ) PROMULGATION ORDER NO. 06-00\_2-001**  
)  
**ADOPTION OF THE GUAM )**  
**RULES FOR JUDICIAL )**  
**DISCIPLINARY ENFORCEMENT )**  
\_\_\_\_\_ )

In the Spring of 2003, the Subcommittee on Judicial Ethics ("Subcommittee") was formed and tasked by the Unified Judiciary Committee (now Judicial Council of Guam) to review Guam's system of judicial discipline. The Subcommittee formulated the Guam Rules for Judicial Disciplinary Enforcement which were sent to the justices and judges of the judiciary of Guam and the membership of the Guam Bar Association for comment.

On March 17, 2006, the Subcommittee submitted its report to the Supreme Court recommending adoption of the Guam Rules for Judicial Disciplinary Enforcement. On March 27, 2006, the matter of the adoption of the Guam Rules for Judicial Disciplinary Enforcement came before the Supreme Court for hearing.

Upon the recommendation of the Subcommittee, and under the authority to govern judicial ethics granted by the Organic Act of Guam at 48 U.S.C. § 1424-1(a)7, the Supreme Court, on March 27, 2006, adopted the Guam Rules for Judicial Disciplinary Enforcement as follows:

**GUAM RULES FOR JUDICIAL DISCIPLINARY  
ENFORCEMENT TERMINOLOGY**

**TERMINOLOGY**

To promote effective disciplinary enforcement in Guam, the terminology set forth below shall be used.

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**ORIGINAL**

1           **Commission Counsel:** the lawyer drafting reports, providing legal advice to the judicial  
2 disciplinary authority and performing other duties assigned by the judicial disciplinary authority.  
3 *See* Rule 5.

4           **Complaint:** information in any form from any source received by the Committee on  
5 Judicial Discipline that alleges or from which a reasonable inference can be drawn that a judge  
6 committed misconduct or is incapacitated. If there is no written complaint from another person,  
7 disciplinary counsel's written statement of the allegations constitutes the complaint.

8           **Deferred Discipline Agreement:** a confidential agreement between the judge and the  
9 Committee on Judicial Discipline for the judge to undergo treatment, participate in education  
10 programs or take other corrective action. It is only available as a response to misconduct that is  
11 minor and can be addressed through treatment or a rehabilitation program. A deferred discipline  
12 agreement can only be entered into prior to the filing and service of formal charges.

13           **Disciplinary Counsel:** the lawyer in charge of screening and investigating complaints,  
14 prosecuting formal charges and performing other duties assigned by the Committee on Judicial  
15 Discipline or the Special Court. *See* Rule 4.

16           **Formal Charges:** the document that charges the judge with specific acts of misconduct or  
17 with a specific incapacity.

18           **Special Court:** the adjudicatory body of the judicial disciplinary system appointed by the  
19 Supreme Court of Guam that conducts hearings on formal charges. *See* Rule 3.2.

20           **Hearing:** the public proceeding at which the issues of law and fact raised by the formal  
21 charges and answer are tried. *See* Rule 24.

22           **Incapacity:** a mental or physical condition that adversely affects a judge's ability to perform  
23 judicial functions. Incapacity is distinguished from a disability that does not adversely affect a  
24 judge's performance of judicial functions.

25           **Incapacity Inactive Status:** non-disciplinary involuntary retirement or removal of a judge  
26 from judicial office, with or without pay or retirement benefits, because of mental or physical  
27 inability to perform judicial functions.

**Interim Suspension:** temporary removal from office pending a final determination in any  
proceeding under these rules. *See* Rule 15.

**Investigation:** an inquiry into allegations of misconduct, including a search for and  
examination of evidence concerning the allegations, divided into two stages: a preliminary  
investigation conducted by disciplinary counsel after the receipt of a complaint and a full  
investigation conducted after approval by the Committee on Judicial Discipline. *See* Rule 17.

1           **Committee on Judicial Discipline:** the investigatory body of the judicial disciplinary  
2 system that determines whether full investigations will be conducted and whether formal charges  
3 will be filed. *See* Rule 3.1.

4           **Judge:** anyone, whether or not a lawyer, who is an officer of a judicial system, and who is  
5 eligible to perform judicial functions, including an officer such as a magistrate, court  
6 commissioner, special master or referee, is a judge within the meaning of these Rules. A justice of  
7 the Supreme Court of Guam is a judge within the meaning of these Rules.

8           **Misconduct:** any conduct by a judge constituting grounds for discipline. *See* Rule 6(A).

9           **Private Admonition:** a non-public sanction imposed on a judge by Committee on Judicial  
10 Discipline with the consent of the judge. *See* Rule 6(B)(6). A private admonition cannot be  
11 imposed after the filing and service of formal charges. Only in cases of minor misconduct, when  
12 there is little or no injury to the public, the legal system or the profession, should a private  
13 admonition be imposed.

14           **Proceedings:** all steps in the discipline and incapacity system set forth in these rules.

15           **Public Members:** members of the Committee on Judicial Discipline and the Special Court  
16 who are neither lawyers nor judges.

17           **Public Reprimand:** a reprimand by the Supreme Court of Guam in the form of a written  
18 decision which shall be imposed in person or served upon the respondent by certified mail.

19           **Reasonable Cause:** a reasonable ground for belief in the existence of facts warranting the  
20 filing of formal charges for discipline or a petition for transfer to incapacity inactive status.

21           **Record:** all documents filed in the case beginning with the formal charges. The record  
22 includes a transcript of the hearing on the formal charges only if a transcript is requested by the  
23 respondent, disciplinary counsel or a member of the Special Court, Committee on Judicial  
24 Discipline or the Supreme Court of Guam.

25           **Respondent:** a judge or former judge against whom formal charges have been filed.

26           **Screening:** examination of a complaint or other information coming to the attention of  
27 disciplinary counsel to determine whether the Committee on Judicial Discipline has jurisdiction.  
*See* Rule 17.

## **RULE 1. DISCIPLINARY AUTHORITY**

The disciplinary authority of the Committee on Judicial Discipline and the Special Court extends to every judge.

1                                   **RULE 2.1 THE COMMITTEE ON JUDICIAL DISCIPLINE**

2           (A)   **Established.** There is a special committee of the Guam Judicial Council called the  
3 Committee on Judicial Discipline.

4           (B)   **Purpose.** The Committee on Judicial Discipline shall administer the investigatory  
5 function of the judicial discipline and incapacity system.

6           (C)   **Jurisdiction.**

7               (1)   **Judges.** The Committee on Judicial Discipline has jurisdiction over  
8 judges regarding allegations that misconduct occurred during service as a judge and  
9 regarding allegations of incapacity during service as a judge.

10              (2)   **Former Judges.** The Committee on Judicial Discipline has  
11 continuing jurisdiction over former judges regarding allegations that misconduct  
12 occurred during service as a judge if a complaint is made within one year following  
13 service as a judge.

14              (3)   The lawyer disciplinary authority shall have exclusive jurisdiction  
15 over judges regarding allegations that misconduct occurred before service as a  
16 judge. The lawyer disciplinary authority shall have exclusive jurisdiction over  
17 former judges regarding allegations that misconduct occurred following service as  
18 a judge.

19           (D)   **Appointment of Members.** The commission shall have 6 members who shall be  
20 appointed by the Guam Judicial Council. Two members shall be judges, current or retired, of the  
21 Superior Court of Guam or of the federal courts, or retired justices of the Supreme Court of Guam;  
22 2 members shall be lawyers who are residents of Guam and admitted to practice in Guam and of  
23 good standing; and 2 members who are residents of Guam and who are neither lawyers nor judges  
24 shall be public members.

25           (E)   **Terms.** Members of the Committee on Judicial Discipline shall serve for a term of  
26 4 years and shall be eligible for reappointment to a second full term. Initial appointments shall be  
27 made so that the terms of one member in each of the three categories shall expire every 2 years. A  
member appointed to a term of less than 4 years or to fill an unexpired term may be reappointed  
for two full terms. The members of the Committee on Judicial Discipline shall not be subject to  
removal except for cause. Three successive unexcused absences shall be deemed cause for removal.  
Removal shall be by the Guam Judicial Council.

          (F)   **Vacancies.** A vacancy shall occur when a member of the Committee on Judicial  
Discipline ceases to be eligible to represent the category from which the member was appointed,  
or becomes unable to serve for any reason. An appointment to fill a vacancy for the duration of an  
unexpired term shall be made by the Guam Judicial Council. If a vacancy is not filled by the Guam  
Judicial Council within 60 days from the date on which the Committee on Judicial Discipline  
notified the Guam Judicial Council of the vacancy, the Chief Justice of Guam shall appoint from

1 the category to be represented a member within the next ten 10 days. That member will serve for  
2 the duration of the unexpired term.

3 (G) **Funding.** The Committee on Judicial Discipline shall prepare its own budget and  
4 submit it to the Guam Judicial Council.

## 5 **RULE 2.2 THE SPECIAL COURT**

6 (A) **Established.** There is a court impaneled and constituted by the Supreme Court of  
7 Guam called the Special Court.

8 (B) **Purpose.** The Special Court shall administer the adjudicatory function of the judicial  
9 discipline and incapacity system.

10 (C) **Jurisdiction.**

11 (1) **Judges.** The Special Court has jurisdiction over judges regarding  
12 allegations that misconduct occurred during service as a judge and regarding  
13 allegations of incapacity during service as a judge.

14 (2) **Former Judges.** The Special Court has continuing jurisdiction over  
15 former judges regarding allegations that misconduct occurred during service as a  
16 judge if a complaint is made within one year following service as a judge.

17 (D) **Appointment of Member(s).** The Special Court shall have 3 members who shall  
18 be appointed by the Chief Justice of Guam. One member shall be a judge of the Superior Court of  
19 Guam; 1 member shall be a lawyer admitted to practice in Guam; and 1 member who is neither a  
20 lawyer nor a judge who shall be a public member.

21 (E) **Terms.** Members of the Special Court shall serve for a term of 4 years and shall be  
22 eligible for reappointment to a second full term. The members of the Special Court shall not be  
23 subject to removal except for cause. Three successive unexcused absences shall be deemed cause  
24 for removal. Removal shall be by the Guam Judicial Council.

25 (F) **Vacancies.** A vacancy shall occur when a member of the Special Court becomes  
26 unable to serve for any reason. An appointment to fill a vacancy for the duration of an unexpired  
27 term shall be made by the Chief Justice of Guam. If a vacancy is not filled by the Chief Justice of  
Guam within 60 days from the date on which the Special Court notified the Chief Justice of the  
vacancy, the Guam Judicial Council shall appoint from the category to be represented a member  
within the next 10 days. That member will serve for the duration of the unexpired term.

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1                   **RULE 3.1 ORGANIZATION AND AUTHORITY OF THE COMMITTEE**

2           (A)   **Meetings.** The Committee on Judicial Discipline shall meet periodically as  
3 determined by its members to consider administrative matters. Meetings of the Committee on  
4 Judicial Discipline other than periodic meetings may be called by the chair upon the chair's own  
5 motion and shall be called by the chair upon the written request of three members of the Committee  
6 on Judicial Discipline.

7           (B)   **Officers.** The Committee on Judicial Discipline shall elect one of its members to  
8 serve as chair and another to serve as vice-chair for such terms as the Committee on Judicial  
9 Discipline shall determine. The vice-chair shall perform the duties of the chair whenever the chair  
10 is absent or unable to act.

11           (C)   **Quorum.** Four members of the full Committee on Judicial Discipline shall  
12 constitute a quorum for the transaction of business. Alternate members should be appointed where  
13 necessary to fulfill the quorum requirements. Alternate member(s) shall be appointed by the Guam  
14 Judicial Council.

15           (D)   **Expenses.** Members shall be reimbursed for reasonable and necessary expenses  
16 incurred pursuant to their duties.

17           (E)   **Powers and Duties.**

18                   (1)   The Committee on Judicial Discipline, with the concurrence of the  
19 Special Court, shall have the duty and authority to:

20                           (a)   adopt its own rules of procedure for discipline and  
21 incapacity proceedings subject to the approval of the Supreme Court  
22 of Guam of Guam; and

23                           (b)   propose amendments to the code of judicial conduct  
24 and these Rules for Judicial Disciplinary Enforcement to the  
25 Supreme Court of Guam.

26                   (2)   In addition to the duties assigned to disciplinary counsel and  
27 commission counsel in Rules 4 and 5, the Committee on Judicial Discipline may  
delegate to either the disciplinary counsel or commission counsel the duty and  
authority to:

                         (a)   maintain the Committee on Judicial Discipline's  
records;

                         (b)   maintain statistics concerning the operation of the  
Committee on Judicial Discipline and make them available to the  
Committee and the Supreme Court of Guam;

1 (c) prepare the commission's budget for its approval and  
2 administer the funds;

3 (d) notify the appropriate appointing authority of  
4 vacancies on the Committee on Judicial Discipline;

5 (e) prepare an annual report of the Committee on  
6 Judicial Discipline's activities for presentation to the Supreme Court  
7 of Guam and the public; and

8 (f) inform the public of the existence and operation of  
9 the judicial discipline system, including the Committee on Judicial  
10 Discipline's address and telephone number and the disposition of  
11 each matter in which public discipline is imposed.

12 (3) The Committee on Judicial Discipline shall have the duty and  
13 authority to:

14 (a) review the recommendations of disciplinary counsel  
15 after preliminary investigation and either authorize a full  
16 investigation or dismiss the complaint; and

17 (b) review the recommendations of disciplinary counsel  
18 after full investigation and approve, disapprove or modify the  
19 recommendations as provided in Rule 17(D)(2).

20 (4) The Committee on Judicial Discipline may issue advisory opinions  
21 at the request of a judge.

22 (F) **Recusal.** A member of the Committee on Judicial Discipline shall recuse himself  
23 or herself in any matter in which recusal would be required of a judge under the Code of Judicial  
24 Conduct or the laws of Guam.

25 (G) **Complaints Against Members of the Committee on Judicial Discipline.** If a  
26 complaint is filed against a member of the Committee on Judicial Discipline who is a judge subject  
27 to the jurisdiction of the Committee, the Committee member against whom the complaint has been  
filed shall not participate in the investigation or adjudication of the matter.

### 28 **RULE 3.2 ORGANIZATION AND AUTHORITY OF THE SPECIAL COURT**

29 (A) **Officers.** The Special Court shall elect one of its members to serve as chair and  
30 another to serve as vice-chair for such terms as the Special Court shall determine.

1           **(B) Quorum.** Three members of the Special Court shall constitute a quorum for the  
2 transaction of business. Alternate members should be appointed where necessary to fulfill the  
3 quorum and category requirements.

4           **(C) Expenses.** Members shall be reimbursed for reasonable and necessary expenses  
5 incurred pursuant to their duties.

6           **(D) Powers and Duties.**

7           (1) The Special Court, with the concurrence of the Committee on  
8 Judicial Discipline, shall have the duty and authority to:

9                   (a) adopt its own rules of procedure for discipline and  
10 incapacity proceedings subject to the approval of the Supreme  
11 Court of Guam;

12                   (b) propose amendments to the code of judicial conduct  
13 and these Rules for Judicial Disciplinary Enforcement to the  
14 Supreme Court of Guam;

15           (2) In addition to the duties assigned to disciplinary counsel and commission  
16 counsel in Rules 4 and 5, the Special Court may delegate to either the disciplinary counsel  
17 or commission counsel the duty and authority to:

18                   (a) maintain the Special Court's records;

19                   (b) maintain statistics concerning the operation of the  
20 Special Court and make them available to the Special Court and the  
21 Supreme Court of Guam;

22                   (c) notify the appropriate appointing authority of  
23 vacancies on the Special Court;

24                   (d) prepare an annual report of the Special Court's  
25 activities for presentation to the Supreme Court of Guam and the  
26 public; and

27                   (e) inform the public of the existence and operation of  
the judicial discipline system, including the Special Court's address  
and telephone number and the disposition of each matter in which  
public discipline is imposed.

(3) The Special Court shall have the duty and authority to:

(a) rule on pre-hearing motions, conduct hearings on  
formal charges and make findings, conclusions and







1 be public except incapacity proceedings as provided in Rule 27(B).

2 (B) **Information.**

3 (1) Before the filing and service of formal charges, all information  
4 relating to a complaint that has not been dismissed shall be held confidential by the  
5 Committee on Judicial Discipline and disciplinary counsel and their staffs, except  
6 that the Committee may disclose information:

7 (a) when it is determined that there is a need to notify  
8 another person to protect that person or to notify a government  
9 agency in order to protect the public or the administration of justice;  
10 or

11 (b) upon waiver in writing by the judge.

12 (3) All information relating to a complaint that has been dismissed  
13 without formal charges being filed shall be held confidential by the Committee on  
14 Judicial Discipline and disciplinary counsel and their staffs.

15 (4) Disciplinary counsel's work product, Committee deliberations and  
16 records of the Committee's deliberations shall not be disclosed.

17 (5) Commission counsel's work product, Special Court deliberations and  
18 records of the Special Court's deliberations shall not be disclosed.

19 (C) **Consequences of Disclosure.** Any person, including any member or staff of the  
20 Committee on Judicial Discipline, the Special Court, Commission Counsel or Disciplinary Counsel,  
21 including the individual making the complaint, who divulges information concerning the  
22 proceedings prior to the filing and service of formal charges, or if the investigation discloses that  
23 formal charges should not be issued by the Committee on Judicial Discipline, any member or staff  
24 or person described above who divulges at any time any information concerning the original charge  
25 or divulges the contents or discloses any matter except as permitted by these Rules, shall be guilty  
26 of a misdemeanor.

27 **RULE 12. IMMUNITY FROM CIVIL SUITS**

Communications to the Committee on Judicial Discipline, the Special Court, disciplinary  
counsel, commission counsel, or their staffs relating to misconduct or incapacity and testimony  
given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may  
be instituted against any complainant or witness. Members of the Committee on Judicial Discipline,  
disciplinary counsel and staff, the Special Court, and commission counsel and staff shall be  
absolutely immune from civil suit for all conduct in the course of their official duties.

1 **RULE 13. SERVICE**

2 Service upon the judge of formal charges in any disciplinary or incapacity proceeding or  
3 of notice that a complaint has been received shall be made by personal service upon the judge or  
4 judge's counsel by any person authorized by the chair of the Committee on Judicial Discipline or  
5 by registered or certified mail to the judge's address of record. Delivery of all other papers or  
6 notices shall be made in accordance with the Guam Rules of Civil Procedure.

6 **RULE 14. SUBPOENA POWER**

7 (A) **Oaths.** Oaths and affirmations may be administered by any member of the  
8 Committee on Judicial Discipline, disciplinary counsel in matters under full investigation or any  
9 other person authorized by law.

9 (B) **Subpoenas for Investigation.** After a full investigation is authorized pursuant to  
10 Rule 17(B)(3), disciplinary counsel may issue subpoena to compel the attendance of the judge or  
11 witnesses and the production of pertinent books, papers and documents for purposes of  
12 investigation. The Chairperson of the Committee on Judicial Discipline may issue subpoenas for  
13 specific witnesses or documents at the request of a judge under investigation.

13 (C) **Subpoenas for Deposition or Hearing.** After formal charges are filed, disciplinary  
14 counsel and respondent may issue subpoena to compel the attendance of witnesses and the  
15 production of pertinent books, papers and documents at a deposition or hearing held under these  
16 rules.

16 (D) **Enforcement of Subpoenas.** Upon proper application, the Superior Court of Guam,  
17 in a sealed proceeding may enforce the attendance and testimony of any witnesses and the  
18 production of any documents subpoenaed.

18 (E) **Quashing Subpoena.** Any attack on the validity of a subpoena shall be heard and  
19 determined by the Committee on Judicial Discipline or the Special Court before which the matter  
20 is pending or by the Supreme Court of Guam wherein enforcement of the subpoena is being sought.  
21 Any resulting order is not appealable prior to entry of a final order in the proceeding.

21 (F) **Witnesses and Fees.** Subpoena fees and costs shall be the same as those provided  
22 for in proceedings in the Superior Court of Guam.

22 **RULE 15. INTERIM SUSPENSION**

23 (A) **Criminal Prosecution.** Without the necessity of disciplinary action, the Supreme  
24 Court of Guam may immediately place a judge on interim suspension, with pay, upon notice of the  
25 filing of an indictment, information or complaint in any jurisdiction charging the judge with a  
26 "serious crime".

26 (B) **Definition of "Serious Crime."** A "serious crime" is: (1) any felony or (2) a lesser  
27 crime that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other

1 respects; or (3) any crime a necessary element of which, as determined by the statutory or common  
2 law definition of the crime, involves interference with the administration of justice, false swearing,  
3 misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt,  
conspiracy or solicitation of another to commit a "serious crime."

4 (C) **Other Misconduct.** Upon receipt of sufficient evidence demonstrating that a judge  
5 poses a substantial threat of serious harm to the public or to the administration of justice, the  
6 Supreme Court of Guam may suspend the judge, with or without pay, pending a final determination  
in any proceeding under these Rules.

7 (D) **Motion for Reconsideration.** A suspended judge may apply to the Supreme Court  
8 of Guam for reconsideration of the order.

9 (E) **Effect on Disciplinary Action.** Interim suspension of a judge shall not preclude  
10 action by the disciplinary authority on the same conduct that was the basis for the criminal charge.  
11 Acquittal, dismissal or conviction of the criminal charge shall not preclude proceedings by the  
12 disciplinary authority on the conduct that was the basis for the charge.

#### 13 **RULE 16. NOTIFICATION TO COMPLAINANT**

14 Disciplinary counsel shall provide written acknowledgment of every complaint, if the  
15 complainant is known, and notify the complainant in writing of the final disposition of a proceeding  
16 under these Rules. Notification in writing shall be mailed within 10 days of the order disposing of  
the proceeding.

#### 17 **RULE 17. SCREENING AND INVESTIGATION**

18 (A) **Screening.** Disciplinary counsel shall evaluate all information coming to  
19 disciplinary counsel's attention by complaint or from other sources that alleges judicial misconduct  
20 or incapacity. If the information would not constitute misconduct or incapacity if true, disciplinary  
21 counsel shall dismiss the complaint, subject to review by the Committee on Judicial Discipline. If  
the information raises allegations that would constitute judicial misconduct or incapacity if true,  
disciplinary counsel shall conduct a preliminary investigation.

#### 22 (B) **Preliminary Investigation.**

23 (1) Disciplinary counsel may conduct interviews and examine evidence  
24 to determine whether grounds exist to believe the allegations of complaints,  
25 provided that no subpoena shall issue to obtain testimony or evidence until the  
26 Committee on Judicial Discipline authorizes a full investigation pursuant to Rule  
27 17(c).

1           (2)    When disciplinary counsel believes there is evidence supporting the  
2           allegations against a judge, he or she shall recommend to the Committee on Judicial  
3           Discipline that the Committee authorize a full investigation. Disciplinary counsel  
4           may recommend a full investigation when there are grounds to believe that evidence  
5           supporting the allegations could be obtained by subpoena or further investigation.  
6           In all other cases, disciplinary counsel shall recommend that the matter be  
7           dismissed.

8           (3)    The Committee on Judicial Discipline shall review disciplinary  
9           counsel's recommendations and either dismiss the complaint or authorize a full  
10          investigation.

11          (C)    **Full Investigation.**

12          (1)    Within 10 days after the Committee on Judicial Discipline  
13          authorizes a full investigation, disciplinary counsel shall give the following notice  
14          to the judge:

15               (a)    a specific statement of the allegations being  
16               investigated and the canons or rules allegedly violated, with the  
17               provision that the investigation can be expanded if appropriate;

18               (b)    the judge's duty to respond pursuant to Rule 17(C)(3);

19               (c)    the judge's opportunity to meet with disciplinary  
20               counsel pursuant to Rule 17(C)(4); and

21               (d)    the name of the complainant unless the Committee on  
22               Judicial Discipline determines that there is good cause to withhold  
23               that information taking into consideration factors, including but not  
24               limited to the materiality of the information possessed by the  
25               complainant and the position the complainant occupies in relation  
26               to the judge.

27          (2)    The Committee on Judicial Discipline may defer the giving of notice  
              but, when notice is deferred, disciplinary counsel must give notice to the judge  
              before making a recommendation as to a disposition.

              (3)    Disciplinary counsel may request that the judge file a written  
              response within 20 days after service of the notice under Rule 17(C)(1).

              (4)    Before the Committee on Judicial Discipline determines its  
              disposition of the complaint under Rule 17(D), either disciplinary counsel or the  
              judge may request an appearance before disciplinary counsel to respond to  
              questions. The appearance shall be on the record. If disciplinary counsel requests

1 the judge's appearance, disciplinary counsel must give the judge 20 days notice and  
2 the testimony shall be sworn.

3 (5) Disciplinary counsel is authorized to issue subpoenas pursuant to  
4 Rule 14(B) once a full investigation has been approved. Disciplinary counsel shall  
5 conduct all investigations.

6 **(D) Disposition After Full Investigation.**

7 (1) Upon the conclusion of a full investigation, disciplinary counsel may  
8 recommend to the Committee on Judicial Discipline:

- 9 (a) dismissal;
- 10 (b) private admonition or deferred discipline agreement;
- 11 (c) the filing of formal charges;
- 12 (d) the filing of a petition for transfer to incapacity  
13 inactive status;
- 14 (e) referral to an appropriate agency; or
- 15 (f) a stay.

16 (2) The Committee may adopt, reject or modify the recommendations  
17 of disciplinary counsel. If the Committee finds a violation pursuant to Rule 6 for  
18 which the imposition of discipline is not warranted it may dismiss. If the Committee  
19 finds that there is reasonable cause to believe the judge committed misconduct,

20 (a) it may propose a private admonition or deferred  
21 discipline agreement to the respondent and if the respondent  
22 consents, it shall admonish the respondent or implement the deferred  
23 disciplinary agreement; in addition, it may assess costs against the  
24 respondent as a condition of the private admonition or deferred  
25 disciplinary agreement;

26 (b) if the respondent does not consent to the  
27 admonishment or the deferred discipline, the investigative panel  
may direct disciplinary counsel either to file formal charges or  
dismiss the complaint; or

(c) it may direct disciplinary counsel to file formal  
charges.



1 (C) Nothing in this Rule shall be construed to relieve disciplinary counsel from the  
2 burden of proof or persuasion in establishing a *prima facie* case of misconduct.

3 **RULE 22. DISCOVERY**

4 (A) **Witnesses.** Within 20 days of the filing of an answer, disciplinary counsel and  
5 respondent shall exchange the names and addresses of all persons known to have knowledge of the  
6 relevant facts. Disciplinary counsel or the respondent may withhold such information only with  
7 permission of the Special Court, which can authorize withholding of the information only for good  
8 cause shown, taking into consideration the materiality of the information possessed by the person  
9 known to have knowledge of the relevant facts and the position such person occupies in relation  
10 to the judge. The Special Court's review of the withholding request is to be *in camera*, but  
11 disciplinary counsel must advise respondent of the request without disclosing the subject of the  
12 request. The Special Court shall set a date not less than thirty [30] days prior to the completion of  
13 discovery for the exchange of the names and addresses of all witnesses the parties intend to call at  
14 the hearing. Disciplinary counsel and respondent may take depositions only of witnesses to be  
15 called at the hearing and other witnesses who are unavailable to testify. Depositions of other  
16 persons may be taken only with permission of the Special Court and only for good cause shown.

12 (B) **Other Evidence.** Disciplinary counsel and respondent shall exchange:

13 (1) non-privileged evidence relevant to the formal charges, documents  
14 to be presented at the hearing, and witness statements of those who will be called  
15 at the hearing; and

16 (2) other material only upon good cause shown to the Special Court.

17 (C) **Exculpatory Evidence.** Disciplinary counsel shall provide respondent with  
18 exculpatory evidence relevant to the formal charges.

19 (D) **Duty of Supplementation.** Both parties have a continuing duty to supplement  
20 information required to be exchanged under this Rule.

21 (E) **Completion of Discovery.** Unless extended by the Special Court for good cause  
22 shown, all discovery shall be completed within 60 days of the filing of the answer.

23 (F) **Failure to Disclose.** Taking into consideration the reasons for the failure to disclose,  
24 the prejudice to the party calling the witness if the witness is not called and the extent to which the  
25 opposing party will be prejudiced by the lack of advance disclosure, the Special Court may  
26 preclude either party from calling a witness at the hearing if the party has not provided the opposing  
27 party with the witness's name and address, or any statements taken from the witness.

(G) **Resolution of Disputes.** Disputes concerning discovery shall be determined by the  
Special Court. The decisions of the Special Court concerning discovery may not be appealed before  
the entry of the final order.



1           (C)    **Conduct of Hearing.**

2                   (1)    All testimony shall be under oath.

3                   (2)    Disciplinary counsel shall present evidence on formal charges.

4                   (3)    Disciplinary counsel may call the respondent as a witness.

5                   (4)    Both parties shall be permitted to present evidence and produce and  
6 cross-examine witnesses.

7                   (5)    The hearing shall be recorded verbatim. Whenever a transcript is  
8 requested by respondent, disciplinary counsel, a member of the Special Court, or  
9 the Supreme Court, a transcript of the hearing or that part of the hearing requested  
shall be produced promptly and shall be provided to the respondent without cost.

10                  (6)    Disciplinary counsel and the respondent may submit proposed  
11 findings of fact, conclusions of law, and recommendations for sanction or order of  
dismissal to the Special Court.

12                  (7)    If a hearing officer is used, the findings are to be submitted to the  
13 Special Court.

14           (D)    **Dismissal or Recommendation for Sanction.** The Special Court shall either  
15 dismiss the case or recommend a sanction to the Supreme Court of Guam. The Special Court shall  
16 decide a matter only upon the concurrence of a majority of its members.

17           (E)    **Submission of the Report.** Within 30 days after the hearing or after the filing of  
18 the transcript if one was requested, the Special Court shall file with the Supreme Court the record  
19 of the proceeding and a report setting forth a written summary, proposed findings of fact,  
20 conclusions of law, any minority opinions and the order of dismissal or recommendation for  
sanction. The Special Court shall at the same time serve the report upon the respondent and  
disciplinary counsel.

21           (F)    **Notice of Exceptions.** Within 20 days of receipt of the Special Court's report, the  
22 respondent and disciplinary counsel may file with the Supreme Court notice of exceptions to the  
23 findings, conclusions or recommendations for sanction or order of dismissal of the Special Court  
24 and the request for any further transcripts. The failure to file notice of exceptions constitutes  
acceptance of the findings of fact, conclusions of law and order of dismissal or recommendation  
for sanction.

25           (G)    **Notice to the Guam Bar Ethics Committee.** Whenever the Special Court  
26 recommends the suspension or removal of a respondent, it shall serve a copy of its report on the  
27 Guam Bar Ethics Committee at the same time the report is filed with the Supreme Court. The Guam  
Bar Ethics Committee may file with the Supreme Court recommendations for imposing lawyer  
disciplinary sanctions on the respondent. Recommendations from the Guam Bar Ethics Committee

1 shall be filed in a brief in accordance with Rule 25(B).

2 **RULE 25. REVIEW BY SUPREME COURT OF GUAM**

3 **(A) Expedited Consideration.**

4 (1) The Clerk of the Supreme Court shall docket for expedited  
5 consideration any case in which the Special Court recommended a sanction or a  
6 notice of exceptions was filed.

7 (2) In cases the Special Court has dismissed to which no exceptions  
8 were filed, the dismissal shall be final if the Supreme Court has not ordered a  
review within 15 days.

9 **(B) Brief and Supplementary Filings.**

10 (1) Disciplinary counsel, the respondent and the Guam Bar Ethics  
11 Committee, if it is entitled to file pursuant to Rule 24(G), shall file briefs as follows:  
12 upon the filing of the record, the Clerk of Court shall issue a briefing schedule  
13 granting the excepting party(ies) 30 days to file its opening brief. Opposing  
party(ies) shall have 20 days to file the opposition brief. The excepting party(ies)  
14 shall have 7 days to file any reply.

15 (2) If the Supreme Court desires an expansion of the record or additional  
16 findings, it shall remand the case to the Special Court with appropriate directions,  
retain jurisdiction and withhold action pending receipt of the additional filing.

17 (3) The Supreme Court may order additional briefs or oral arguments as  
18 to the entire case or specified issues.

19 **(C) Stay for Further Proceedings.** If during review by the Supreme Court the Special  
20 Court receives another complaint against the respondent, the disciplinary counsel shall advise the  
21 Supreme Court. The Supreme Court may stay its review pending the Special Court's determination  
of the second complaint. The Supreme Court may impose a single sanction covering all  
recommendations for discipline from the Special Court against a respondent.

22 **(D) Decision.**

23 (1) The Supreme Court shall file a written decision dismissing the case  
24 or imposing a sanction. All decisions issued by the Supreme Court shall be  
published for the guidance of other judges and for public information.

25 (2) The Supreme Court may accept, reject or modify in whole or in part  
26 the findings and conclusions of the Special Court.

27 (3) The Supreme Court may assess costs against the respondent if it

1 finds the respondent committed misconduct.

2 **RULE 26. COMPLAINT AGAINST A MEMBER**  
3 **OF THE SUPREME COURT OF GUAM**

4 (A) **Proceedings Generally.** A complaint against a member of Supreme Court of Guam  
5 shall proceed in the same manner as a complaint against any other judge except as set forth in this  
6 Rule.

7 (B) **Special Supreme Court.** Upon either a motion by disciplinary counsel or the  
8 Supreme Court of Guam's own motion for interim suspension of a member of the Supreme Court  
9 pursuant to Rule 15(A) or a finding of reasonable cause to believe misconduct was committed by  
10 a member of the Supreme Court of Guam pursuant to Rule 17(B)(2), a Special Supreme Court shall  
11 be constituted. The Special Supreme Court shall consist of a number of judges equal to the number  
12 of justices of the Supreme Court of Guam. Judges of the Special Supreme Court shall meet the  
13 same qualifications as a regularly appointed Justice of the Supreme Court. Selection of the Judges  
14 of the Special Supreme Court shall be determined by the Clerk of the Supreme Court, by lot, from  
15 a list maintained by the Clerk of the Supreme Court of Guam of qualified and available persons.

16 (C) **Stipulated Dispositions.** Final review of a stipulation pursuant to Rule 23 shall be  
17 by the Committee on Judicial Discipline and the Special Court.

18 (D) **Final Disposition.** If neither the disciplinary counsel nor the respondent objects to  
19 the decision of the Special Court pursuant to Rule 24(D), the decision shall be final and the Special  
20 Supreme Court shall not review the matter. If either the disciplinary counsel or the respondent  
21 objects, the Special Court shall file its report and conclusions, any minority opinion and the record  
22 of the proceedings with the Special Supreme Court which shall review the matter pursuant to Rule  
23 25.

24 **RULE 27. CASES INVOLVING ALLEGATIONS**  
25 **OF MENTAL OR PHYSICAL INCAPACITY**

26 (A) **Initiation of Incapacity Proceeding.** An incapacity proceeding can be initiated by  
27 complaint, by a claim of inability to defend in a disciplinary proceeding or by an order of  
involuntary commitment or adjudication of incompetency.

(B) **Proceedings to Determine Incapacity Generally.** All incapacity proceedings shall  
be conducted in accordance with the procedures for disciplinary proceedings, except:

(1) the purpose of the incapacity proceedings shall be to determine  
whether the judge suffers from a physical or mental condition that adversely affects  
the judge's ability to perform judicial functions;

(2) all of the proceedings shall be confidential;

(3) the Committee on Judicial Discipline may appoint a lawyer to

1 represent the judge if the judge is without representation; and

2 (4) if the Supreme Court concludes that the judge is incapacitated to  
3 hold judicial office, it may enter any order appropriate to the circumstances, the  
4 nature of the incapacity and the probable length of the period of incapacity,  
including:

5 (a) retiring the judge;

6 (b) transferring the judge to judicial incapacity inactive  
7 status;

8 (c) if the Supreme Court concludes that the judge is  
9 incapacitated to practice law, transferring the judge to lawyer  
incapacity inactive status; and

10 (d) if a judicial disciplinary proceeding against the judge  
11 is pending and the Supreme Court concludes that the judge is  
12 incapacitated to defend, deferring the disciplinary proceeding,  
pursuant to Rule 27.D(2).

13 (C) **Involuntary Commitment or Adjudication of Incompetency.** If a judge has been  
14 judicially declared incompetent or is involuntarily committed on the grounds of incompetency or  
15 incapacity by a final judicial order after a judicial hearing, the Supreme Court, upon receipt of a  
16 certified copy of the order, shall enter an order immediately transferring the judge to both lawyer  
17 and judicial incapacity inactive status. A copy of the order shall be served, in the manner the  
Supreme Court shall direct, upon the judge, his or her guardian or the director of the institution to  
which the judge has been committed.

18 (D) **Inability to Properly Defend in a Disciplinary Proceeding.**

19 (1) If in the course of a disciplinary proceeding a judge alleges an  
20 inability to assist in the defense due to mental or physical incapacity, disciplinary  
21 counsel shall notify the Supreme Court. The Supreme Court shall immediately  
22 transfer the judge to lawyer and judicial incapacity inactive status pending a  
23 determination by the Supreme Court of the incapacity pursuant to Rule 27(B). A  
determination by the Committee on Judicial Discipline that the judge is able to  
assist in his or her own defense is interlocutory and may not be appealed before  
entry of a final order in the proceeding.

24 (2) If, pursuant to Rule 27(B), the Supreme Court determines the claim  
25 of inability to defend is valid, the disciplinary proceeding shall be deferred. Any  
26 investigation of the disciplinary complaint may continue. The judge shall be  
27 retained on lawyer and judicial incapacity inactive status until the Supreme Court  
grants a petition for reinstatement to active status as a lawyer or judge. If the  
Supreme Court considering the petition for reinstatement to active status determines

1           that the petition shall be granted, the Supreme Court shall also determine the  
2           disposition of the interrupted disciplinary proceedings.

3           (3)    If, pursuant to Rule 27(B), the Supreme Court determines that the  
4           claim of inability to defend is invalid but that the judge is incapacitated to hold  
5           judicial office, the disciplinary proceeding shall resume. The judge shall be retained  
6           on judicial incapacity inactive status.

7           (4)    The raising of mental or physical condition as a defense to or in  
8           mitigation of formal charges constitutes a waiver of medical privilege.

9           **(E)    Stipulated Disposition.**

10          (1)    The Special Court shall designate one or more qualified medical,  
11          psychiatric or psychological experts to examine the judge prior to the hearing on the  
12          matter. The Special Court may designate an expert agreed upon by disciplinary  
13          counsel and the judge. The expert or experts shall report to the highest court and the  
14          parties.

15          (2)    After receipt of the examination report, disciplinary counsel and the  
16          judge may agree upon proposed findings of fact, conclusions, and order. The  
17          stipulated disposition shall be submitted to the Special Court for a recommendation  
18          to the Supreme Court for approval or rejection. The final decision on the  
19          recommendation shall be made by the Supreme Court.

20          (3)    If the Supreme Court accepts the stipulated disposition, the Supreme  
21          Court shall enter an order in accordance with its terms. If the stipulated disposition  
22          is rejected by the Supreme Court, it shall be withdrawn and cannot be used against  
23          the judge in any proceedings. If the Supreme Court rejects the stipulated disposition,  
24          the Supreme Court shall order that the hearing proceed.

25          **(F)    Reinstatement from Incapacity Inactive Status.**

26          (1)    No judge transferred to incapacity inactive status may resume active  
27          status except by order of the Supreme Court.

          (2)    Any judge transferred to incapacity inactive status shall be entitled  
          to petition for transfer to active status once a year or at whatever shorter intervals  
          the Supreme Court may direct in the order transferring the judge to incapacity  
          inactive status or any modifications thereof.

          (3)    Upon the filing of a petition for transfer to active status, the Supreme  
          Court may take or direct whatever action it deems necessary or proper to determine  
          whether the incapacity has been removed, including a direction for an examination  
          of the judge by qualified medical or psychological experts designated by the  
          Supreme Court.

          (4)    With the filing of a petition for reinstatement to active status, the

Promulgation Order No. 06-00 \_\_\_\_  
Adoption of the Guam Rules for Judicial Disciplinary Enforcement

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judge shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the judge has been examined or treated since the transfer to incapacity inactive status. The judge shall furnish to the Supreme Court written consent to the release of information and records relating to the incapacity if requested by the Supreme Court or court-appointed medical or psychological experts.

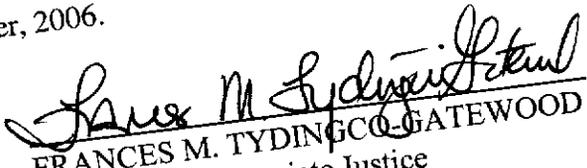
(5) If a judge transferred to lawyer incapacity inactive status on the basis of a judicial determination of incompetence has been declared to be competent, the Supreme Court may dispense with further evidence that the incapacity to practice law has been removed and may immediately direct reinstatement to active status as a lawyer.

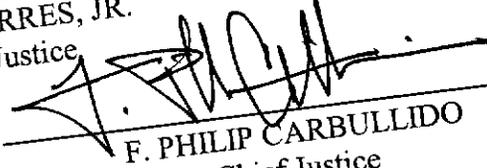
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These rules shall govern the discipline and removal of a judge as defined herein. The new rules were effective as of the date of adoption on March 27, 2006.

SO ORDERED this 5<sup>th</sup> day of September, 2006.

  
ROBERT J. TORRES, JR.  
Associate Justice

  
FRANCES M. TYDINGCO-GATEWOOD  
Associate Justice

  
F. PHILIP CARBULLIDO  
Chief Justice