

IN THE SUPREME COURT OF GUAM

FILED
BY: 

ADOPTION OF REVISED COURT RULES)
FOR THE DISCIPLINE OF ATTORNEYS)
_____)

Promulgation Order: 98-001

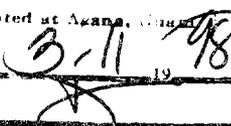
The Supreme Court of Guam, having considered the matter sitting en banc on 5 March 1998, has adopted the attached as the Revised Court Rules for the Discipline of Attorneys and has contemporaneously adopted the following administrative requirement in support of its implementation:

The Guam Bar Association's Ethics Committee is to immediately conform its practices, under the existing rules governing the procedures of the Ethics Committee, to accommodate the language and intent of the Rules adopted herein. Within sixty (60) days of the Chief Justice's promulgation of the Revised Rules, the Ethics Committee will transmit to the Chief Justice proposals for amendments to the existing Rules of the Guam Bar Ethics Committee Governing Discipline, so that the Court can act in adopting or modifying these and promulgate revised Ethics Committee Rules consistent with those addressed herein.

Subject to the transition provisions set forth in Rule 21 of the Rules hereby adopted, the Revised Rules shall take effect immediately.

The Court acknowledges with appreciation the members of the Ethics Committee of the Guam Bar Association, the Compiler of Laws and the other members of our legal community who reviewed the proposed revisions in draft and provided suggestions for their improvement. The revised Rules, as adopted, incorporated a great number of those comments.

Dated this 11th day of March, 1998.

I do hereby certify that the foregoing is a full true and correct copy of the original as filed in the office of the clerk of the Supreme Court, Guam.
Listed at Agaña, Guam




PETER C. SIGUENZA, Chief Justice

SUPREME COURT OF GUAM RULES FOR THE DISCIPLINE OF ATTORNEYS

PREAMBLE

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 him- or her-self at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for that privilege.

In the exercise of the Supreme Court's jurisdiction, pursuant to 7 GCA § 9101, 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 proceedings against members of the Bar of Guam and all attorneys within this court's jurisdiction. All gender specific pronouns and titles in the following rules are to be construed as applying to all such persons, regardless of gender.

SOURCES: Preface, Supreme Court of New Mexico Rules Governing Discipline, October 1, 1983 (hereinafter "S.Ct.N.M. Rule"); 7 GCA § 5201. The 1998 amendment reflects the Supreme Court of Guam's authority over attorney discipline. The operative statutory basis for these Rules is now 7 GCA § 9101.

Rule 1. Jurisdiction.

Any attorney regularly admitted to practice law in this territory, any attorney specially admitted to practice by a court of this territory or any individual admitted to practice as counsel for governmental agencies, or otherwise; is subject to the disciplinary jurisdiction of the Supreme Court and the Ethics Committee established pursuant to this Court's adoption, in April 1996, of the existing Ethics Committee Rules reflected in Appendix G to Title 7 of the Guam Code Annotated and as expressly continued in the Rules below.

SOURCES: S.Ct.N.M. Rule 1; former 7 GCA 5202; Model Rules of Professional Conduct of the American Bar Association (hereinafter "ABA") Rule 8.5. Following the 1998 amendment, the operative statutory basis for these Rules is 7 GCA § 9101.

Rule 2. Filing of Proposed Order; Statement of Objection

Upon the filing in the Clerk of Court's Office of an Ethics Committee proposed order that discipline be imposed on an attorney, the Clerk of the Supreme Court shall give written notice of the filing date thereof to prosecuting counsel, the respondent and counsel for the respondent. The attorney-respondent shall have twenty (20) days therefrom to file a statement of objections challenging the Ethics Committee's findings of fact, conclusions of law, and/or proposed discipline. In the absence of such objection, the Clerk of the Supreme Court will enter the proposed order as a final judgment of the Court.

Whenever any attorney-respondent files a statement of objection he shall also pay the docketing fee required by the Clerk of the Supreme Court in appeals. The Clerk of the Supreme Court shall give written notice of the filing date of the objection to prosecuting counsel, the attorney-respondent and counsel for the respondent.

SOURCES: The substance of this section is new with the 1998 amendment to the Rules.

1998 Drafting Note: The above changes reflect the shift to the Supreme Court's ultimate power to determine an attorney's discipline. For purposes of timeliness (which has been lacking in the past) and judicial economy, the Supreme Court is adopting a procedure similar to an appellate procedure, and the use of administrative hearing officers in executive agencies. The Ethics Committee of the Guam Bar Association acts in the role of administrative hearing body, upon which the Supreme Court will mostly rely, but whose role is not as final arbiter of the matter except for private reprimands. Changes will be required in the Ethics Committee's procedures to effectuate this Rule.

Rule 2-1 Preparation of a Record/Transcripts

Within ten (10) days of filing his petition, the Petitioner shall designate the record he wishes his case reviewed upon, including those record documents he deems relevant, and any hearing testimony which he wishes to have transcribed. The Petitioner is responsible for requesting the preparation of transcripts from the Ethics Committee, with service of that request made on the Prosecuting Counsel. The transcripts may be prepared by any transcriber which the Ethics Committee finds acceptable for this purpose, but the transcripts will be certified by the Senior Member of the Ethics Committee who attended the hearing in question, or his designee.

The Prosecuting Counsel will have ten (10) days following the Petitioner's designation of record, to designate additional documents and to request additional transcripts in the same manner as that indicated above.

All transcripts are to be completed within forty (40) days of the Petition's filing, unless the Chief Justice approves a longer time based upon the circumstances presented by way of motion. The Petitioner will bear the costs of the transcripts he requests.

Upon completion of the transcripts, these and all record documents designated will be filed by the Chairman of the Ethics Committee (or an officer of the Guam Bar he designates for this purpose) with the Supreme Court of Guam.

Source: 1998 revision.

Rule 3. Consideration by the Supreme Court.

(a) Submission of Briefs. Upon receipt of the attorney-respondent's statement of objection and the documents filed in support thereof, the Chief Justice shall promptly set the matter for a hearing to a panel composed of three justices of the Supreme Court as he shall designate. The Chief Justice shall appoint a justice of the panel to serve as Presiding Justice of the panel. Within thirty (30) days after the filing of the record the attorney-respondent will file a brief in the general form prescribed for an appellant's brief in Rules 13 and 16 of the Guam Rules of Appellate Procedure. Within twenty (20) days thereafter, the prosecuting counsel shall file a brief complying generally with that required by Rules 13 and 16 of an appellee.

(b) Scope of Supreme Court Review. The panel of Justices shall consider the record generated by the parties before the Bar's Ethics Committee. The Court will conduct its review based upon its role as the final determiner of discipline in attorney ethics matters. The court will give close consideration to the findings, conclusions and recommendations of the Ethics Committee but will in each instance be free to substitute its own judgment for that of the Committee. All factual and legal determinations made by the Committee, and the appropriateness of the discipline to be imposed, are examined by the Court de novo. The Court is also free to increase, as well as decrease, the quantity and nature of the discipline to be imposed.

(c) No evidentiary hearing before the Supreme Court. There will be no evidentiary hearing before the Supreme Court, which will conduct an appellate review of the record generated below giving due consideration to issues raised in the briefs of the parties and their oral argument. If an issue appears to require additional hearing the Court may, by a majority vote of the panel members, direct that the Ethics Committee conduct further hearings.

(d) Oral Argument. When oral argument is presented, the respondent-attorney shall proceed first and the prosecuting counsel shall proceed last. The amount of time for oral argument shall be determined by the Presiding Justice of the panel.

(e) Burden of persuasion. The burden of persuasion shall rest with the attorney-respondent to establish that the findings, conclusions and discipline entered by the Ethics Committee should not be sustained.

(f) Supreme Court Judgment. The Supreme Court shall render its judgment promptly. The Supreme Court may accept, reject or modify the discipline contained in the recommendations of the Ethics Committee, and may increase as well as decrease the discipline imposed. The Supreme Court is not restricted to the findings of the Ethics Committee and may render its judgment based upon the record as the Court determines it. The judgment of the Court shall be carried out in the following manner:

(1) in the event of a dismissal, the Court shall notify the respondent-attorney, his respective counsel, prosecuting counsel, and the complainant;

(2) in the event of a judgment by the Supreme Court to publicly reprimand the respondent-attorney under Rule 12(a)(4) of these rules, the Court shall order the respondent-attorney to appear before the Court, and the Chief Justice of Guam or his designee shall deliver the reprimand orally and in writing. Copies of the written reprimand shall be delivered to the respondent-attorney, his respective counsel, prosecuting counsel, and the complainant;

(3) in the event of a determination by the Supreme Court to impose discipline under Rule 12 of these rules, it shall prepare its written judgment over the signatures of the Justices of the panel. Any judgment shall require the concurrence of at least two of the Justices of the panel. The judgment shall require an attorney who has resigned under Rule 15 of these rules or has been disbarred or suspended to comply with the requirements of Rules 15 and 18 through 20. A copy of the judgment shall be served on the respondent-attorney, their respective counsel, prosecuting counsel, and the complainant.

SOURCES: N.M. Rule 15 and former 7 GCA § 5203(e). Substantially revised through the 1998 amendment.

Rule 4. Finality of Supreme Court Decisions; Reconsideration.

(a) Finality. The determination of the Supreme Court in a matter of attorney discipline under these Rules is final and unreviewable, except as provided in these Rules. This Rule reflects the Supreme Court's role as the ultimate admission and disciplinary authority over attorneys in Guam, being aided in this role by the Guam Bar Association, all as provided in 7 GCA sec. 9101.

(b) Reconsideration. Respondent-Attorneys who are disciplined by the Court's judgment, and Prosecuting Counsel associated with the matter, may file, within ten (10) days, a motion for reconsideration. If a majority of the panel members determine that there is good cause for reconsidering the matter the presiding Justice shall order it resubmitted to the panel without further hearing, and judgment shall reissue following the reconsideration of the matter.

(c) Stays, Motions for. Stays, whether sought on the basis of reconsideration, review sought before some other forum or for any other basis, will not be automatic. Stays will be considered on a case by case basis through a motion process. The Court will grant such where it is in the interest of justice to do so.

SOURCES: N.M. Rule 16 and former 7 GCA § 5210. This Rule was substantially rewritten in the course of the 1998 amendment.

1998 Drafting Note: As is the case in many jurisdictions, the Supreme Court's action concludes the matter finally under the 1998 amendment. As this process is based upon the Court's authority to administer the Bar, as opposed to its general appellate authority, it does not appear that certiorari review by the Ninth Circuit Court of Appeals would be available during the interim established under 48 USC § 1424-2. However, the determination of that Court's jurisdiction is a matter for it to address. Because of the finality of the decision, a provision for reconsideration is added.

Rule 5. Registration of Attorneys.

(a) Registration Statement. Every attorney admitted to practice in Guam, as counsel for governmental agencies or otherwise, shall file a registration statement with the Bar of Guam showing any change in the information previously submitted pursuant to the Guam Bar Association Rules and Bylaws within thirty days of such change. Upon receipt of a registration statement, the Bar of Guam shall forward a copy of the statement to the Clerk of the Supreme Court for filing. Such documents will be identified as filed with the Supreme Court in its capacity as the Board of Law Examiners (BOLE) and will be held in a record system maintained by the BOLE administrator.

(b) Failure to File. The Bar of Guam shall, in keeping with its duty to receive annual and amending registration statements, provide written notice to those attorneys who fail to file such, within fifteen (15) days of the Bar's becoming aware of the failure. Any attorney who fails to file the registration statement in accordance with the requirements of Paragraph (a) of this rule, may be summarily suspended and barred from practicing law in Guam if he fails to file the registration statement within thirty (30) days after the mailing of notice of such failure, until he shall have complied therewith.

(c) Inactive Attorneys. An attorney who has retired, or is not engaged in practice as provided in Paragraph (a), may indicate to the Guam Bar, through the annual registration form it provides or by letter containing the same information, that he desires to assume inactive status and to discontinue the practice of law. The Bar will transfer his name from the listing of active attorneys to those who are inactive, and forward the submission to the Supreme Court for filing per subparagraph (a), above; as well as forward information copies to the Clerks of the Superior and District Courts of Guam. The attorney shall no longer be eligible to practice law but shall continue to file registration statements for a period of ten (10) years in order that he can be located in the event complaints are made about his conduct while he was engaged in practice.

(d) Reinstatement of Inactive Attorneys. A petition to the Guam Bar for reinstatement shall be granted as a matter of course, upon payment of the current active dues.

(e) Service. The Supreme Court or Ethics Committee may serve any order, judgment, pleading or other matter on an attorney by mailing a copy of such order, judgment, pleading or other matter to the attorney at the address shown on the latest registration statement on file with the Supreme Court and this shall constitute notice as required by these rules or the Bar of Guam Ethics Committee Rules of Procedure- Disciplinary Proceedings Rule 23.

SOURCES: S.Ct.N.M. Rule 3; Bar of Guam Ethics Committee Rules of Procedure-- Disciplinary Proceedings Rule 23. Substantially amended in 1998.

Rule 6. Required Records.

(a) Required Records. Every attorney subject to these rules shall maintain complete records of the handling, maintenance and disposition of all funds, securities and other property received from or on behalf of a client or third person which have at any time come into his possession, and shall further maintain on a current basis all books and records which will establish his compliance with the Model Rules of Professional Conduct of the American Bar Association (ABA) Rule 1.15.

In addition to the requirements of ABA Rule 1.15, an attorney shall keep a complete record and report annually on the certificate of compliance, the name of each financial institution and each account number of every financial institution in which the attorney maintains funds received from or on behalf of a client or third person. These records shall cover the entire time from receipt to the time of final disposition of said funds, securities or other properties, or, as to fiduciary or trust records, five years following the termination of the fiduciary or trust relationship.

(b) Certificate of Compliance. On forms to be prescribed by the Ethics Committee, every attorney subject to these rules shall annually submit to the Bar of Guam his certificate of compliance with this rule and ABA Rule 1.15. Such certificate shall be submitted to the Bar of Guam in conjunction with the registration statement indicated in Rule 5. The Bar of Guam shall forward all certificates of compliance to the Clerk of the Supreme Court for filing, after permitting the Ethics Committee to review these. The certificates will be designated as filed with the Court in its capacity as the Board of Law Examiners (BOLE) and will be kept in a system of records maintained by the BOLE Administrator.

(c) Applicability of Rule. This rule shall not apply to any attorney whose entire compensation derived from the practice of law during the year was received in his capacity as an employee handling legal matters of a corporation or an agency of the federal or local government. Any such attorney shall, in lieu of the required certificate, certify on the same form provided by the Ethics Committee that he has not had in his possession any funds, securities or other properties of a client or third person.

SOURCES: S.Ct.N.M. Rule 5; Model Rules of Professional Conduct of the American Bar Association (hereinafter "ABA") Rule 1.15.

Rule 7. Powers and Duties of the Ethics Committee.

The Committee shall have the power and duty to conduct an annual meeting at a time and place to be determined by the Chief Justice and chairman of the Ethics Committee. The meeting will be sponsored by the Guam Judicial Conference, and those invited to attend shall be the members of the Ethics Committee and judges and justices of Guam's Courts. The purpose of this meeting will be to review rules, discuss problems, establish performance criteria, and discuss any other matters the Committee or courts considers necessary.

SOURCE: S.Ct.N.M. Rule 6.

Rule 8. Service of Papers upon the Ethics Committee.

All documents filed in an ethics matter pending under these rules before the Supreme Court of Guam, shall be filed with the Clerk of Court and maintained in the file associated with the case. Copies of such filings shall be served on the opposing party. With regard to the Ethics Committee, service shall be made upon both the Prosecuting Counsel and the Chairman of the Committee. With regard to these persons, service may be achieved through actual service upon a responsible office employee, associated with them respectively.

The Chairman of the Ethics Committee is responsible for maintaining the appropriate records of the Committee.

SOURCE: 1998 revision.

1998 Drafting Note: This amendment removes the Court from acting as the agent of the Ethics Committee and makes the Committee responsible for its own records.

Rule 9. Prosecuting Counsel.

Prosecuting Counsel shall, before the Supreme Court, represent the Ethics Committee in advancing the propriety of the findings of fact, conclusions of law and the discipline entered by the Committee. Prosecuting Counsel also conducts hearings before the Ethics Committee pursuant to their Rules.

SOURCES: S.Ct.N.M. Rule 8; former 7 GCA § 5203(e). Amended in 1998 to reflect the roles of the Prosecuting Counsel before the Ethics Committee as well as the Supreme Court.

Rule 10. Assessments.

Upon recommendation of the hearing counsel, the Ethics Committee may assess a respondent-attorney who has been determined to have committed an act or omission which provides a basis for the imposition of discipline under Rule 11, below, for all the expenses and costs which were incurred in a disciplinary proceeding before the Committee, including the cost of depositions, transcripts and witnesses; and also for attorney fees. The Supreme Court may assess a respondent-attorney, if discipline is imposed under Rule 12 of these rules, for all the expenses and costs which were incurred in a disciplinary proceeding before the Court.

SOURCE: S.Ct.N.M. Rule 9. Amended in 1998 to clarify bases under which assessments could be imposed and to include attorney fees among these.

Rule 11. Grounds for Discipline.

Discipline may be imposed for any of the following reasons:

- (a) Conviction of a crime other than a non-serious traffic offense;
- (b) Violation of a rule of professional conduct in effect in Guam;
- (c) Discipline imposed in another jurisdiction; or
- (d) Violation of any disciplinary or disability rule or order of any court having jurisdiction in Guam, or any law imposing a rule of professional conduct upon attorneys.

SOURCE: Former 7 GCA § 5206.

Rule 12. Discipline

(a) Types of Discipline. A violation of the Model Rules of Professional Conduct of the American Bar Association, statute, or Court rule shall be grounds for:

- (1) disbarment;
- (2) suspension for a time certain with automatic reinstatement;
- (3) indefinite suspension with reinstatement upon petition as provided under Rule 20(b) of these rules unless timely objections are filed;
- (4) public or private reprimand;
- (5) imposition of a fine imposed by the Supreme Court;
- (6) requirement that an attorney successfully pass the multi-state professional responsibility examination given by the board of law examiners the next time it is given or be suspended for a period set by the Supreme Court; or
- (7) any combination of the above.

(b) Probation. If the record discloses that a respondent can still perform legal services with proper supervision the Supreme Court in its discretion and under such conditions as it may specify, may impose probation or other conditions as a type of discipline by itself or may defer the effect of the discipline specified in Subparagraphs (1), (2), (3) or (4) of Paragraph (a) of this rule, in whole or in part, or the effect of an indefinite suspension imposed on account of incapacity under Rule 14, upon condition that the respondent accept probationary status for such time as the court may prescribe, and as the respondent faithfully fulfills all of the conditions thereof.

(c) Restitution. An attorney who has been disciplined under this rule may be ordered to make restitution. An order of restitution does not preclude damages being awarded by a court of competent jurisdiction.

(d) Publication of Discipline. Any final judgment of disbarment, definite and indefinite suspension, public censure or fine entered by the Supreme Court shall be published and disseminated through the same channels as are the appellate opinions of the Supreme Court of Guam. The Ethics Committee shall also publish news of such discipline through at least one local newspaper, and the attorney who is the subject of that discipline will pay the costs associated with the publication. Additionally, any newsletter published by the Guam Bar Association shall contain a summary of any such judgments that have become final. Further, the Bar shall publish a summary of any warning letter, not considered discipline for purposes of these rules, but which provides substantial guidance regarding attorney ethics; and shall do so without reference to the name of the attorney so warned.

(e) Effective Date. The effective date of any discipline imposed under this rule shall be set forth in the judgment of the Supreme Court or, if the respondent-attorney has elected not to proceed in the Supreme Court of Guam, as is set forth in the order of the Ethics Committee.

SOURCES: S.Ct.N.M. Rule 11; former 7 GCA § 5207. Amended in 1998.

Rule 13. Summary Suspension.

(a) Summary Suspension. Upon recommendation by the Ethics Committee, an attorney may be summarily suspended from the practice of law by the Supreme Court:

(1) upon the filing with the Supreme Court of a certified copy of a judgment finding an attorney guilty of a crime other than a non-serious traffic offense;

(2) upon the filing with the Supreme Court of an order or judgment declaring the attorney to be incompetent or incapacitated;

(3) upon the Ethics Committee's demonstrating to a three justice panel constituted in the manner prescribed by Rule 3, above, that an attorney is incapacitated from practicing law or defending himself; or

(4) upon the filing in the Supreme Court and service upon an attorney by hearing counsel of a petition which sets forth facts demonstrating that practicing law by an attorney will result in a substantial probability of harm, loss or damage to the public and that:

(i) the attorney is under investigation by hearing counsel for an alleged violation of the Model Rules of Professional Conduct of the American Bar Association or a violation of a court rule, statute or other law;

(ii) formal disciplinary charges have been filed against the attorney; or

(iii) a criminal complaint, information or indictment has been filed against the attorney.

Before suspending an attorney under this Subparagraph (4), the Chief Justice shall cause to be served on the attorney an order to show cause why the petition of hearing counsel should not be granted and requiring the attorney to appear before a panel appointed by the Chief Justice. The petition shall be served on the attorney at least ten days prior to the date set for the hearing unless a shorter time is ordered by the court. At any time prior to the hearing, an attorney may file an answer to the petition. A copy of the answer shall be served on hearing counsel. At such a hearing the Presiding Justice shall make rulings upon questions of admissibility of evidence and the conduct of the hearing. The rules of evidence of the Superior Court (6 G.C.A., Division 1) shall generally apply, but the Court may, in its sound discretion and for good cause shown, receive and consider any reasonably competent, reliable and credible evidence.

(b) Suspension Order. Upon a showing made under this rule, the Supreme Court may enter an order immediately suspending the attorney pending the conclusion of a disciplinary proceeding, regardless of the pendency of an appeal from the conviction of a crime other than a non-serious traffic offense or order or judgment declaring the attorney to be incompetent or incapacitated.

(c) Evidence of Commission of Crime. A judgment or plea of guilty or no contest by 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.

(d) Reinstatement. An attorney suspended under the provisions of Paragraph (a) of this rule shall be reinstated immediately upon the filing of a certificate by the Ethics Committee demonstrating that:

(1) if the suspension was for conviction of a crime other than a non-serious traffic offense that has been reversed and no further proceedings have been ordered by the reviewing court;

(2) if the suspension was imposed because of incompetency or incapacity, the Ethics Committee certifies that the incapacity or incompetency no longer exists; or

(3) if the suspension was imposed on a showing that practicing law by the attorney would result in a substantial probability of harm, loss or damage to the public, the Ethics Committee certifies that the probability no longer exists.

(e) Effect of Reinstatement. Reinstatement after a summary suspension shall not terminate any formal disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Ethics Committee as provided in these rules.

(f) Duty of Clerk or Judge. Any clerk or judge of any court within this territory who, in the course of his official duties, learns that a member of the bar of Guam has been convicted of a crime other than a non-serious traffic offense shall, within ten (10) days of learning of said conviction, transmit a certificate thereof to the Ethics Committee.

(g) Failure to Forward Certificate. Upon being advised that an attorney has been convicted of a crime or other than a non-serious traffic offense within this territory, the Ethics Committee shall determine whether the Court in which the conviction occurred has forwarded a judgment of conviction to the Ethics Committee in accordance with the provisions of Paragraph (f) of this rule. If the judgment has not been forwarded to the Ethics Committee, or if the conviction occurred in another jurisdiction, it shall be the responsibility of the Ethics Committee to obtain a copy of the judgment of the conviction.

SOURCES: S.Ct.N.M. Rule 12; former 7 GCA § 5207. Amended in 1998.

Rule 14. Incompetency or Incapacity.

(a) Determination of Incompetency. When an attorney has been judicially declared incompetent or has been involuntarily committed for treatment for a mental, emotional, alcohol or drug dependent condition; the Supreme Court or the Chief Justice or his or her designee Justice, upon receipt of a recommendation from the Ethics Committee; may enter an order immediately suspending the attorney from practicing law until the further order of the Court. The attorney, upon request, shall be afforded an opportunity to be heard on the continuation of the suspension. A copy of such order shall be served upon the respondent's attorney, guardian and the director of the mental facility in the manner as the Court may direct.

(b) Determination of Incapacity. Whenever the Ethics Committee shall petition the Supreme Court to determine whether an attorney is incapacitated from practicing law or defending himself, the court may take action as it considers necessary to determine whether the attorney is incapacitated, including the examination of the attorney by such qualified medical experts as the court shall designate; and an evidentiary hearing before a panel appointed by the Chief Justice in the manner indicated by Rule 3 above. Pending the determination of the issue of capacity, all court hearings in the matter will be closed and all filings and submissions to the court held in confidence. If the Supreme Court finds that the attorney is incapacitated from practicing law, it shall enter an order suspending him on the ground of such incapacity until the further order of the court. Any pending disciplinary proceeding against the attorney shall be stayed.

The court shall provide for the notice to the respondent-attorney of proceedings in the matter as is consistent with fundamental fairness and due process. The court may appoint an attorney to represent him.

(c) Inability to Defend Self During Disciplinary Proceeding. If, during the course of a disciplinary proceeding, the respondent contends that he is incapacitated to an extent which makes it impossible for him to adequately defend himself, the Supreme Court may enter an order immediately suspending him from practicing law until a determination is made of his capacity to practice law in a proceeding under Paragraph (b) of this rule.

(d) Resumption of Proceeding. If in a proceeding under these rules the Supreme Court determines that the respondent is not incapacitated from practicing law and/or defending himself, it shall take such action as it considers proper, including a direction for the resumption of the disciplinary proceeding against the respondent.

(e) Burden of Proof. In a proceeding seeking an order of suspension under this rule, the burden of proof shall rest with the Ethics Committee. Formal charges shall be established by the preponderance of the evidence.

SOURCES: S.Ct.N.M. Rule 13; former 7 GCA § 5206(d).

CROSS-REFERENCE: Rule 20.

Rule 15. Resignation by Attorneys Under Investigation.

(a) Protection of Public. An attorney who is the subject of an investigation into allegations of misconduct may resign from the bar of Guam only with consent of the Supreme Court and upon terms the court imposes for the protection of the public.

(b) Sworn Statement. An attorney wishing to resign under the provisions of this rule shall submit a sworn written statement admitting to the truth of the charges against him, or if no charges have been served by the Ethics Committee, admitting to the truth of the allegations filed against him and stating that he consents that the Supreme Court may require reasonable conditions for protection of the public, including making a permanent record of the fact of his resignation under this rule with all jurisdictions where he is admitted and all other appropriate authorities.

(c) Procedure. The Supreme Court shall notify the Ethics 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) Final Order. The application for leave to resign and the Supreme Court's final order disposing thereof shall be matters of public record.

(e) Reinstatement. Any attorney whose resignation under this rule is accepted may not petition for reinstatement to the bar of Guam, except by permission of the Supreme Court. If the Supreme Court allows a petition for reinstatement to be filed, the matter shall be referred to the Ethics Committee for review in accordance with Rule 20 of these rules.

SOURCE: S.Ct.N.M. Rule 14.

Rule 16. Reciprocal Discipline.

(a) Order of the Supreme Court. Upon receipt of notice that an attorney admitted to practice in this territory has been disciplined in another jurisdiction, the Ethics Committee of the Guam Bar Association may cause to be served on the attorney an order to show cause why discipline should not be imposed in this jurisdiction and requiring the attorney to appear before the Committee. The order shall be served on the attorney at least thirty (30) days prior to the date set for the hearing unless a shorter time is ordered by the Committee. At least ten (10) days prior to the hearing, an attorney may file a response. The attorney's response to the order to show cause shall be limited to the criteria enumerated in Paragraph (c) of this rule as reflected in the record of the proceeding resulting in the imposition of discipline in the foreign jurisdiction. A copy of the notice, order to show cause and the response shall be served on the Prosecuting Counsel. At least five days prior to the hearing, the Prosecuting Counsel may file a reply.

(b) Stay of Order. In the event the discipline imposed in the other jurisdiction has been stayed, the entry of an order under the provisions of Paragraph (a) of this rule may be deferred until the stay expires.

(c) Criteria. The Prosecuting Counsel or the respondent-attorney may file a response within twenty (20) days after the service of an order to show cause why discipline should not be imposed in this jurisdiction under this rule, upon the ground that upon the face of the record in the foreign jurisdiction upon which the discipline is predicated, it clearly appears:

(1) that the procedure was so lacking in notice or opportunity to be heard as to deny due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Ethics Committee could not accept as final the conclusion on that subject;

(3) that the imposition of discipline by the Ethics Committee would result in grave injustice; or

(4) that the misconduct established has been held by the Ethics Committee to warrant substantially different or greater discipline.

(d) Discipline. In the event the attorney disciplined in another jurisdiction or the ethics committee fails to show cause why discipline should not be imposed under this rule, the Ethics Committee shall enter an order imposing discipline. Such order is subject to review and modification by the Supreme Court as provided by these Rules.

(e) Evidence of misconduct. In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Guam.

(f) Self-Reporting. Every attorney admitted to practice law on Guam is required to report to the Chairman of the Ethics Committee of the Guam Bar, the fact that an ethics

complaint has been filed against him in any other jurisdiction. Such attorney will have fifteen (15) days from the date he receives notice that he has been complained against in another jurisdiction, to provide the Chairman of the Guam Bar's Ethics Committee, in writing, with the name of the jurisdiction where the matter is pending and a summary of the matter. The attorney will provide all details requested by the Ethics Committee and will, in any event, provide to the Committee a copy of the final adjudication within fifteen (15) days after its service upon him. The Bar Association will note this requirement in its annual registration notification letter.

SOURCES: S.Ct.N.M. Rule 15; former 7 GCA § 5206(c). Substantially amended in 1998, including paragraph (f).

Rule 17. Discipline by Consent; Stipulated Facts.

(a) Conditional Admission. An attorney against whom formal charges have been made may tender a conditional agreement admitting to any of the charges by a sworn written statement:

- (1) admitting sufficient facts to permit a finding that the allegations are true; or
- (2) declaring his intention not to contest the allegations.

(b) Acceptance. The tendered agreement shall be submitted to hearing counsel and may be approved or rejected by the Ethics Committee after consideration of any recommendation made by hearing counsel. If the Committee accepts an admission:

(1) it shall approve the disposition provided for in the tendered admission and:

(i) if the discipline agreed to by the attorney includes resignation, disbarment, suspension or public reprimand by the Supreme Court, the agreement shall be filed with the Supreme Court for entry of a judgment, which shall be entered without further hearing.

(ii) if the discipline agreed to by the attorney provides for a public reprimand by the Ethics Committee, the Ethics Committee shall impose the discipline provided for in the agreement; or

(iii) if the discipline agreed to by the attorney provides for a private reprimand, the Ethics Committee shall direct hearing counsel to impose the discipline provided for in the agreement; or

(2) if the attorney admitted sufficient facts to permit a finding that the allegations are true, but does not agree to a specific form of discipline, after a hearing on the appropriate form of discipline, the Committee shall impose the discipline it considers proper and which may be reviewed and modified by the Supreme Court.

(c) Rejection. If the agreement was conditioned upon a particular discipline and the agreement is rejected by the Ethics Committee, the admission shall be withdrawn and cannot be used against the respondent in any subsequent disciplinary proceedings or in any other judicial proceeding.

(d) Inquiry of Attorney. The Ethics Committee shall not accept an agreement without first, by addressing the attorney personally, determining that:

- (1) he understands the charges against him;
- (2) he understands the proposed disposition of the proceedings;
- (3) he understands that if the agreement is accepted he is waiving his rights to a hearing and determination before the Ethics Committee and review by the Supreme Court of Guam;
- (4) the admission or provisions of the consent decree are voluntary and not the result of force or threats or promises other than any consent decree agreement reached.

SOURCES: S.Ct.N.M. Rule 16; former 7 GCA § 5260.

Rule 18. Resigned, Disbarred or Suspended Attorneys.

(a) Notification of Clients in Pending Matters. An attorney who has resigned under Rule 15 of these rules or has been disbarred or suspended shall within ten (10) days of such judgment notify by registered or certified mail, return receipt requested, all clients being represented by him in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of his resignation, disbarment or suspension and his consequent inability to act as an attorney after the effective date of his resignation, disbarment or suspension, and shall inform the clients to seek legal advice elsewhere. An attorney who has resigned, been disbarred or suspended from the practice of law may not recommend to his clients the name of any other lawyer to represent them.

(b) Notification in Litigated Matters. An attorney who has resigned under Rule 15 or has been disbarred or suspended shall within fourteen (14) days of such judgment give notice of disbarment, suspension or resignation in a form prescribed by the Ethics Committee by registered or certified mail, return receipt requested to each of his clients who is involved in litigated matters or administrative proceedings; to the attorney or attorneys for each adverse party in such matter or proceeding; and to the court or administrative agency in which the matter is being litigated. The notice of disbarment, suspension or resignation shall set forth the effective date of the attorney's resignation, disbarment or suspension. The notice to be given to the client shall inform the client that he should seek the legal advice of another attorney or attorneys in his place. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the attorney.

(c) Withdrawal. In the event the client does not obtain substitute counsel before the effective date of the resignation, disbarment or suspension, it shall be the responsibility of the attorney to advise in writing the court or agency in which the proceeding is pending, that the client is without representation to proceed due to the required withdrawal and the absence of substitute counsel.

(d) Unauthorized Practice of Law. An attorney who has resigned under Rule 15 or has been disbarred or suspended pursuant to these rules, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. Subject to the approval of the Supreme Court, until the effective date of the resignation, suspension or disbarment, the attorney may on behalf of any client, act on such matters which were pending on the date of the agreement or order.

(e) Affidavit of Compliance. Within twenty (20) days after the effective date of the resignation, disbarment or suspension order, the attorney shall file with the Supreme Court an affidavit showing:

- (1) that he has fully complied with the provisions of the order and with this rule; and
- (2) that he has served a copy of such affidavit upon the Ethics Committee.

(f) Registration. The attorney shall file with the affidavit copies of the letters required to be sent under subparagraph (a) of this rule. Such affidavit shall also set forth the residence or other address of the attorney where communications may thereafter be directed to him. The attorney shall continue to file a registration statement under Rule 5 for ten (10) years, listing his residence or other address where communications may thereafter be directed to him, so that he can be located in the event complaints are made about his conduct while he was engaged in practice.

(g) Required Records. An attorney who has resigned under Rule 15 or has been disbarred or suspended shall keep and maintain records of the various steps taken by him under this rule for a period of ten (10) years so that upon any subsequent proceeding instituted by or against him, proof of compliance with these rules and with the disbarment or suspension order will be available.

(h) Disposition of Retainer. Any fee accepted on retainer by an attorney, who is subsequently unable to complete performance due to the imposition of a suspension or disbarment under these rules, shall be accounted for to the client and any remainder, following debits for work performed, returned. This provision does not replace or impair any other remedy available to such client.

(i) Contempt. Any attorney who fails to comply with Rule 18 may be held in contempt of the Supreme Court.

SOURCE: S.Ct.N.M. Rule 17.

1998 Drafting Note: Subparagraph 18(h) is added to ensure that a proper disposition is made of unexpended retainer fees.

Rule 19. Appointment of Counsel.

(a) When appointed. Whenever an attorney is disbarred, suspended, or resigns and no partner, executor or other responsible party capable of conducting the attorney's affairs exists, the Supreme Court, upon motion of the Ethics Committee, or sua sponte, may appoint an attorney or attorneys to inventory the files of the attorney and to take such action as it considers necessary to protect the interests of the attorney or his clients. In addition to the assessment of costs under Rule 10 of these rules the Supreme Court may assess against a respondent-attorney any reasonable costs incurred by an attorney appointed under this rule which were incurred because of the suspension, disbarment or resignation of the respondent-attorney.

(b) Confidentiality of Files. An attorney appointed under this rule shall not disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court.

Source: Originating in the 1985 Rules, and amended in 1998.

Rule 20. Reinstatement.

(a) Disbarred Attorneys: A disbarred attorney may not apply for reinstatement to the practice of law on Guam for a term of three years following the date of the final judgment of disbarment, and then only upon successfully passing the multi-state professional responsibility examination given by the Board of Law Examiners prior to reinstatement. These requirements are threshold prerequisites to the filing of a petition for reinstatement. If such a petition is filed it will be reviewed in accordance with the procedures under Paragraph (d) of this rule.

(b) Suspended Attorneys.

(1) **Automatic Reinstatement.** An attorney who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension. The suspended attorney will automatically be reinstated as of the day after the expiration of the period of suspension.

(2) **Indefinite Suspension.** Except as provided in Paragraph (c) of this rule, an attorney who has been suspended for an indefinite period of time may file with the clerk of the Supreme Court a petition for reinstatement attaching thereto a copy of the order of suspension and an affidavit of compliance, where appropriate, stating that the attorney has complied with previously imposed conditions of reinstatement. The petition shall be referred to the Ethics Committee for a hearing under Paragraph (d) of this rule. If the petition is denied by the Supreme Court as provided in Paragraph (d), the attorney may not again petition for reinstatement for one year, unless otherwise ordered by the Supreme Court.

(c) Suspension Due To Incompetency or Incapacity. An attorney who has been suspended indefinitely due to incompetency or incapacity under Rule 14 may move for reinstatement upon clear and convincing evidence that he is once again fit to resume practicing law; provided, however, that in the event a petition for reinstatement is denied, no further petition for reinstatement may be made for one year, unless otherwise ordered by the Supreme Court.

(d) Procedure for Reinstatement Hearing. A petition for reinstatement shall be referred by the Ethics Committee to an appropriate hearing counsel. The hearing counsel shall promptly schedule a hearing at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that he is once again fit to resume practicing law and that the resumption of his practicing law will not be detrimental to the integrity and standing of the bar, the administration of justice or the public interest. At the conclusion of the hearing, the hearing counsel shall promptly file a report containing his findings of fact, conclusions and recommendations, and transmit the same, together with the record, to the Ethics Committee. The Committee shall review the report of the hearing counsel and the record, and shall file its own recommendations with the Supreme Court, together with the record. The petition shall then be scheduled for hearing before the Supreme Court under Rule 3, after which the court shall determine whether or not the recommendation of the Bar should be approved or rejected. At such hearing the party opposing the Bar's recommendation shall have the burden of persuasion, and

will proceed first in argument.

(e) Review of Record. The determination of reinstatement shall be made on the record generated before the Ethics Committee.

(f) Expenses. The Supreme Court may order that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the attorney.

(g) Attorneys on Probation. Upon completion of the probationary period, an attorney who has been put on formal probationary status under Rule 12 of these rules may file a petition for reinstatement attaching thereto an affidavit of compliance with the terms and conditions of probation. Affidavits of compliance with probation and any objection to reinstatement by the Ethics Committee shall be governed by the procedure set forth in Paragraph (d) of this rule for petitions for reinstatement. After reviewing and investigating a petition for reinstatement, the Ethics Committee may direct:

- (1) full reinstatement;
- (2) extension of the period of probation for a period not to exceed two years (subject to review by the Supreme Court); or
- (3) imposition of other discipline (subject to review by the Supreme Court).

(h) Waiver of Psychotherapist-Patient Privilege. The filing of a petition for reinstatement by an attorney suspended for incompetency or incapacity shall constitute a waiver of any psychotherapist-patient privilege with respect to the treatment of the attorney during the period of his disability. In the petition for reinstatement, the attorney 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 was determined disabled. The attorney shall furnish the Ethics Committee written consent for each psychiatrist, psychologist, physician, hospital or other institution to divulge such information and records as requested by the Ethics Committee.

SOURCE: S.Ct.N.M. Rule 19. Amended in 1998.

Rule 21. Transition Provision.

The amended Rules set forth herein are effective immediately. Pursuant to 7 GCA § 9101 and this Court's previous adoption of the existing Rules governing Bar Administration, all attorney disciplinary matters pending before the Superior Court prior to the effective date of these amended rules shall be continued there and processed under the previous existing Rules (except that this Court will be the forum to hear appeals under the prior Rule 4 of these Rules). Those cases which, for any reason, are not pending before the Superior Court on the effective date of these Rules will be processed in accordance with the Rules herein.

SOURCE: New in 1998 revision.