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IN THE SUPREME COURT OF GUAM

RE)	Supreme Court Case No. PRM18-001
)	
INTERIM RULE RE: PROCEEDINGS)	PROMULGATION ORDER
IN WHICH LAWYER IS DECLARED)	NO. 18-001-01
TO BE INCOMPETENT OR)	
ALLEGED TO BE)	
INCAPACITATED.)	
)	

The Supreme Court of Guam Subcommittee on Attorney Discipline (“Subcommittee”) has been actively working to draft the Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings. As those draft rules are not presently ready for adoption, the Supreme Court has deemed it prudent to implement, on an interim basis, rules relative to proceedings in which a lawyer is declared incompetent or alleged to be incompetent. This Interim Rule is modeled after Rule 23 of the American Bar Association’s Model Rules on Lawyer Disciplinary Enforcement.

Therefore, on the recommendation of the Subcommittee and pursuant to this court’s authority to “govern ...the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law,” 48 U.S.C. § 1424-1(a)(7), the Supreme Court hereby adopts this Interim Rule re: Proceedings in Which Lawyer is Declared to Be Incompetent or Alleged to Be Incapacitated (attached hereto). This Interim Rule shall be effectively immediately, and remain in effect until such time that the Guam Rules for Lawyer



INTERIM RULE RE: PROCEEDINGS IN WHICH LAWYER IS DECLARED TO BE INCOMPETENT OR ALLEGED TO BE INCAPACITATED

A. Involuntary Commitment or Adjudication of Incompetency. If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order of the Court. A copy of the order shall be served, in the manner the Court may direct, upon the lawyer, his or her guardian, or the director of the institution to which the lawyer has been committed.

B. Inability to Properly Defend. If a respondent alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the Court shall immediately transfer the lawyer to disability inactive status pending determination of the incapacity.

(1) If the Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the respondent retained on disability inactive status until the Court subsequently considers a petition for transfer of the respondent to active status. If the Court considering the petition for transfer to active status determines the petition shall be granted, the Court shall also determine the disposition of the interrupted disciplinary proceedings.

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

C. Proceedings to Determine Incapacity. Information relating to a lawyer's physical or mental condition which adversely affects the lawyer's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability inactive status. The hearings shall be conducted in the same manner as disciplinary proceedings, except that the matter shall be filed by Disciplinary Counsel directly with the Court at the Investigative Panel's direction and all of the proceedings shall be confidential. The Court shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable and may appoint a lawyer to represent the respondent if the respondent is without adequate representation. The Court may take or direct whatever action it deems necessary or proper to determine whether the respondent is so incapacitated, including the examination of the respondent by qualified medical experts designated by the Court. If, upon due consideration of the matter, the Court concludes that the respondent is incapacitated from continuing to practice law, it shall enter an order transferring the respondent to disability inactive status for an indefinite period and until the further order of the Court. Any pending disciplinary proceedings against the respondent shall be held in abeyance.

D. Public Notice of Transfer to Disability Inactive Status. The Commission shall cause a notice of transfer to disability inactive status to be published in a newspaper of general circulation in Guam.

E. Reinstatement from Disability Inactive Status.

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

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

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

(4) Waiver of Doctor-Patient Privilege. With the filing of a petition for reinstatement to active status, the respondent shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status. The respondent shall furnish to this Court written consent to the release of information and records relating to the disability if requested by the Court or court-appointed medical experts.

(5) Learning in Law; Bar Examination. The Court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the Board of Law Examiners of successful completion of an examination for admission to practice.

(6) Granting Petition for Transfer to Active Status. The Court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed.

(7) Judicial Declaration of Competence. If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Court may dispense with further evidence that his disability has been removed and may immediately direct his reinstatement to active status upon terms as are deemed proper and advisable.

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