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CHAPTER 9
ATTORNEYS

Article 1. Regulation of Attorneys.

Article 2. Territorial Law Library.

ARTICLE 1
REGULATION OF ATTORNEYS

NOTE: In 1998, the Supreme Court of Guam promulgated Rules for Attorney Discipline, thus completing the transfer of authority over Attorneys from the prior law [formerly published as Appendix A of this Title – Chapter 9A]. Therefore, by operation of law, the old law was repealed and this Chapter came into effect. The Guam Supreme Court has also adopted rules, which may be found on their web site at <http://www.guamsupremecourt.com>, governing attorney admission.

§ 9101. Regulations of Attorneys.

§ 9102. Integrated Bar Association

§ 9103. Acts Repealed.

§ 9104. Transition Provisions.

§ 9105. Fees and Solicitation.

§ 9106. Law Enforcement Officers; Assistance.

§ 9107. Immunity from Liability for Official Action.

§ 9101. Regulations of Attorneys.

The Supreme Court shall have the power to govern attorney and judicial ethics, admission to, expulsion from and governance of a Guam bar association; and shall promulgate rules to effectuate that power.

1985 SOURCE: Portion of Art. VI, § 8, proposed Constitution of Guam (1979); modified.

1985 COMMENT: The proposed Constitution of Guam (1979) gave to the Supreme Court the power to govern the activities of attorneys practicing before it in the same way as the power is vested in almost all of the state supreme courts. The rules to be promulgated here are no different from other rules of the Supreme Court and will be promulgated in the same manner.

§ 9102. Integrated Bar Association; Exemption Thereto.

(a) The Supreme Court of Guam may continue, by rule, the requirement contained in [former] Government Code § 28009, that no person is authorized to practice law on Guam, unless that person be a member in good standing of an integrated bar association. If such requirement is continued, then the Bar of Guam is a public body corporate, the membership of which consists of persons who are now or hereafter licensed to practice law on Guam.

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(b) Any attorney or counselor at law continuously residing for ten (10) years in the Commonwealth of the Northern Mariana Islands ('CNMI') in which the attorney has been admitted to practice law continuously for ten (10) years, who attends any term of the Supreme Court of Guam, Superior Court of Guam or U.S. District Court of Guam for the purpose of trying or participating in the trial or proceedings of any action or proceedings there pending, shall be permitted to try, or participate in the trial or proceedings; provided, that the CNMI, in which the attorney is licensed to practice, likewise grants permission to the members of the Guam Bar Association to act as an attorney for a client in the CNMI under the same terms.

All attorneys practicing law on Guam pursuant to this Subsection shall be subject to the jurisdiction of the Supreme Court of Guam for ethics and other matters in accordance with 7 GCA § 9101, and the Supreme Court of Guam shall promulgate rules and regulations to implement this reciprocity program; provided, that a delay in the promulgation of the rules and regulations shall not delay implementation of the reciprocity program, which shall occur in no more than thirty (30) days.

1985 SOURCE: New; see § 28009, Govt. Code.

1985 COMMENT: In line with transferring governing power over attorneys to the Supreme Court, this section authorized the Supreme Court to continue the requirement that attorneys be members of the association in order to practice law. The power to require membership in a bar association has been much litigated, resulting in the approval of the court's power to make such a requirement. However considering the nature of the courts and our Organic Act, it is more prudent to state such a requirement in law than to assume that the court possesses such power inherently.

SOURCE: (2002) Repealed/reenacted by P.L. 26-89:3 relative to certain reciprocity with the CNMI.

§ 9103. Acts Repealed.

Chapters 1 and 1.5 of Title XXIX of the Government Code are repealed.

1985 SOURCE: New section.

1985 COMMENT: Existing law whereby the Legislature created an integrated bar and Ethics Commission is repealed. Those sections of the existing law which are to be continued will be amended and included elsewhere in this Chapter.

§ 9104. Transition Provisions.

§ 9103 of this Chapter shall not take effect until the rules of the Supreme Court authorized in § 9101 and § 9102 of this Chapter have been promulgated. Upon promulgation of the rules described herein, the powers of the Supreme Court over the attorneys and Bar of Guam shall become

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effective.

1985 SOURCE: New Section.

1985 COMMENT: This section continues existing law, rules and procedures until such time as the Supreme Court is ready to assume its duties under this Chapter. The Supreme Court will, under its rules, provide for the actual procedures for transfer of matters from the Superior Court. There is no need to make such details law.

2002 COMMENT: See Note at beginning of Chapter. These Transition Provisions have been fulfilled and, therefore, § 9103 has taken effect. Thus, the Compiler will no longer publish the Appendix to this Chapter which contained the former and transition law.

§ 9105. Fees And Solicitation.

(a) The measure of compensation of persons authorized to practice law is left to the express or implied agreement of the parties, subject to the regulation of the Supreme Court.

(b) Any agreement for such compensation or for reimbursement of any expenses incident to the prosecution or defense of any claim by any party is wholly void if such professional employment was solicited by the person authorized to practice law or by any other person acting on his or her behalf or at his or her request, unless the services of such person authorized to practice law on Guam are first requested by such party. *Solicitation* shall be defined in the same manner as it is defined in the ethical rules applicable to persons authorized to practice law on Guam.

1985 SOURCE: Govt. Code § 28014; modified.

1985 COMMENT: Modified to reflect the power of the Supreme Court and to reflect developments of "solicitation" and First Amendment rights of attorneys.

§ 9106. Law Enforcement Officers; Assistance.

It is the duty of all Guam law enforcement agencies to aid the Supreme Court and its delegated agents in any investigation of the conduct of persons authorized to practice law in Guam, of the character and fitness of persons who apply for admission to practice law in Guam or reinstatement to the practice of law in Guam, or of persons accused of the unauthorized practice of law in Guam, and to furnish all available information about such individuals.

1985 SOURCE: Govt. Code § 28023; modified to reflect powers of Supreme Court.

§ 9107. Immunity from Liability for Official Action.

Justices of the Supreme Court and those acting pursuant to orders or rules of Court as their employees or agents, including but not limited to members of the Guam Bar Association Ethics Committee, designated Ethics

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Prosecutors, and their employees or agents, shall not be held liable for any action performed in the course of their official duties undertaken pursuant to this Article relative to the discipline of attorneys and to the unauthorized practice of law.

SOURCE: Amended by P.L.27-31:35 (Oct. 31, 2003).

1985 SOURCE: Govt. Code § 28058 added by P.L. 17-62. Standard 3.10, *Immunity*, tent. draft, Lawyer Disciplinary and Disability Proceedings, ABA, 1978.

1985 COMMENT: Immunity protects the independent judgment of the Bar of Guam and avoids diverting the attention of its personnel as well as its resources towards resisting collateral attack and harassment.

The ABA standard recommends absolute privilege rather than a qualified privilege, because qualified privilege does not protect against harassment made possible by simply alleging malice in a law suit. See *Yaselli v Goff*, 12 F.2d (1926), aff'd 276 U.S. 503 (1927) [malicious prosecution]; *Imbler v Pachtman*, 424 U.S. 409 (1976) [civil rights action].

Conduct on the part of personnel which is not authorized or exceeds assigned duty is not protected.

Commentary to Standard 3.10 - *Immunity*, ABA, Tent. draft, 1978.

ARTICLE 2
TERRITORIAL LAW LIBRARY

- § 9201. Territorial Law Library: Chartered; Tax Exempt.
- § 9202. Existence and Function.
- § 9203. Membership of Board: Number of Members; Manner of Appointment.
- § 9204. Term of Board Membership.
- § 9205. Establishment, Maintenance and Regulation of Territorial Law Library: Leasing or Constructing Quarters; Furniture and Services Regulations.
- § 9206. Nature of Office of Trustee: Compensation.
- § 9207. Grounds for Removal of Members.
- § 9208. Designation of President.
- § 9209. Election of Treasurer and Secretary: Duties and Powers.
- § 9210. Disposition of Money Collected.
- § 9211. Fee Payable for Libraries: When to be Paid: Commencement of Action.
- § 9212. Fees From Members of Guam Bar Association.
- § 9213. Authority of Legislature to Augment Fund.
- § 9214. Use of Libraries.

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§ 9215. Furnishing of Reports, Statutes and Other Documents.

§ 9201. Territorial Law Library: Chartered; Tax Exempt.

(a) The Guam Territorial Law Library, is hereby chartered.

(b) The Guam Territorial Law Library, as a nonprofit educational corporation, shall be exempt from taxes and licensing requirements under the laws of Guam.

SOURCE: GC § 28500; enacted by P.L. 14- 155. This entire Article was first enacted by P.L. 14-155. All source references in this Article will refer to P.L. 14-155, unless the section has been amended.

COMMENT: The reason for placing this law here is that the Legislature placed this as Chapter III of Title XXIX of the Government Code. Chapters I and II are Articles 1 and 2 of this Chapter, hence this Article is in the same relative place as intended by the Legislature. This Article was neither repealed nor amended by P.L. 21-147, creating the Supreme Court of Guam.

§ 9202. Existence and Function.

(a) There is established in the territory of Guam a Board of Law Library Trustees, which governs the Guam Territorial Law Library.

(b) The first Board of Trustees shall prepare Articles of Incorporation and By-laws for the governing of the Library. The Articles and By-laws shall be filed with the Director of the Department of Revenue and Taxation and the Legislative Secretary and shall become effective upon filing.

(c) The Board of Trustees, by majority vote, may appoint a law librarian whose duties, compensation, qualifications and tenure of office shall be determined by the Board. The librarian shall be the administrative head of the law library and shall be responsible to the Board of Law Library Trustees for the administration of personnel and service activities of the Guam Territorial Library.

SOURCE: GC § 28501.

§ 9203. Membership of Board: Number of Members; Manner of Appointment.

The Board of Law Library established in §9202 of this Chapter shall consist of nine (9) members and shall be constituted as follows:

(1) the Chief Justice of the Supreme Court of Guam may appoint himself or herself, or one (1) Associate Justice of the Supreme Court to serve *ex officio* as a trustee or, in the event a Justice chooses not to so serve, he shall appoint a Law Clerk in the employ of the Court or a member of the Guam Bar to serve as trustee for a term of three (3)

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years;

(2) the Judge of the District Court may appoint himself or herself to serve *ex officio* as a trustee or, in the event he chooses not to serve, he may appoint a Law Clerk in the employ of the District Court or a member of the Guam Bar to serve as trustee; provided, that if there be more than one (1) Judge of the District Court, such Judges may appoint one (1) of their number to so serve, they may appoint a Law Clerk in the employ of the District Court or a member of the Guam Bar to serve as trustee to a term of four (4) years;

(3) the Presiding Judge of the Superior Court may appoint himself or herself, or one (1) Judge of the Superior Court to serve *ex officio* as a trustee or, in the event a Judge chooses not to serve, the Presiding Judge shall appoint a Law Clerk in the employ of the Superior Court or a member of the Guam Bar to serve as trustee for a term of three (3) years;

(4) the Judicial Council shall appoint one (1) trustee who is a member of the Guam Bar for a term of four (4) years;

(5) the Chairman of the committee that has oversight of the judiciary of *I Liheslaturan Guåhan* shall appoint one (1) trustee who is a member of the Guam Bar for a term of two (2) years expiring no later than the last day of the legislative term in which the appointment occurred;

(6) the Territorial Librarian shall be a trustee *ex officio*;

(7) *I Maga'lahi*, the Governor, shall appoint one (1) trustee who is a member of the Guam Bar for a term of four (4) years expiring no later than the last day of *I Maga'lahi*, the Governor's term in which the appointment occurred; and

(8) the President of the Guam Bar Association shall appoint two (2) trustees who are members of the Guam Bar for a term of two (2) years.

SOURCE: GC §28502. Subsection (e) amended by P.L. 24-135:3 (Feb. 20, 1998); 24-139:24 (Feb. 28, 1998). Repealed and reenacted by P.L. 27-31:36 (Oct. 31, 2003).

§ 9204. Board Vacancies.

In the event that any member of the Board of Law Library Trustees shall die, resign, or otherwise be removed from the Board prior to the expiration of his term as set forth in § 9203 of this Chapter, the vacancy so created shall be filled for the remainder of such member's term in the same

manner in which the member whose death, resignation or removal that created such vacancy was appointed.

SOURCE: GC § 28503. Repealed and reenacted by P.L. 27-31:37 (Oct. 31, 2003).

§ 9205. Establishment, Maintenance and Regulation of Territorial Law Library: Leasing or Constructing Quarters; Furniture and Services Regulations.

The Board of Law Library Trustees shall establish and maintain a Law Library in Agana, as close to the Judiciary Building as possible. The Board may lease or construct suitable quarters to house the library facility and shall provide these quarters with suitable furniture and services for utilities, maintenance and security. The Board shall coordinate with the Nieves M. Flores Library concerning access to material by providing a catalog of the law library collection at the central library.

SOURCE: GC § 28504.

§ 9206. Nature of Office of Trustee: Compensation.

The office of trustee is honorary, without salary or other compensation. Ordinary and necessary expenses of trustees may be reimbursed from the funds of the Territorial Law Library upon application approved by the Board.

SOURCE: GC § 28505.

§ 9207. Grounds for Removal of Members.

The Board of Law Library Trustees, acting pursuant to the provisions of the Articles and By-laws of the Territorial Law Library, may remove a trustee for cause.

SOURCE: GC § 28506.

§ 9208. Designation of President.

The Board shall elect one (1) of its number as president, whose powers and duties shall be prescribed in the Articles and By-laws.

SOURCE: GC § 28507.

§ 9209. Election of Treasurer and Secretary: Duties and Powers.

(a) The Board of Law Library Trustees shall elect from its members a treasurer, who shall keep a full statement and account of all property, money, receipt and expenditures of the law library.

(b) The Board shall elect from its members a secretary who shall keep a record and full minutes in writing of all proceedings of the Board. The

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secretary may certify to such proceedings or any part thereof, under his hand, verified by an official seal adopted and provided by the Board for that purpose.

SOURCE: GC § 28508.

§ 9210. Disposition of Money Collected.

All money collected for the law library must be paid into the hands of the treasurer of the law library or his designee, who must keep the same in a bank account or accounts in the name of 'The Guam Territorial Law Library' to be expended by the Board of Law Library Trustees.

All funds that are a part of the Superior Court Law Library Fund at the time this Act becomes effective shall be immediately transferred to the *Guam Territorial Law Library*.

SOURCE: GC § 28509.

§ 9211. Fee Payable for Libraries: When to be Paid: Commencement of Action.

(a) On the commencement in or the removal to the Superior Court of any civil action, proceeding or appeal, the party instituting such proceeding or filing the first papers shall pay to the clerk of the court, for the Territorial Law Library, a law library fee computed in accordance with the following schedule for such increased schedule as may be duly adopted by the Judicial Council.

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| 1. For filing complaint in Superior Court | \$10.50 |
| 2. For filing petition for appearance of judgment debtor in Superior Court | \$ 4.00 |
| 3. For filing confession of judgment | \$ 8.00 |
| 4. For filing appeals from small claims trial de novo | \$10.50 |
| 5. For filing small claims in Superior Court | \$ 3.00 |

(b) Fifty percent (50%) of all fees collected by the clerk of the Superior Court for fees and for clerical services rendered in connection with probate and guardianship matters shall be paid over to the Territorial Law Library Fund.

(c) All penal fines and forfeited cash bonds collected by the Territory, except those collected by the Traffic Court, shall be paid over to the Territorial Law Library.

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(d) All interest and other income earned from funds held in the Judicial Branch Special Trust Funds shall be paid over to the Territorial Law Library.

(e) The fees collected under Subsections (a) and (b) of this Section shall be in addition to any other fees collected by the clerk pursuant to the schedule established by the Judicial Council in the Rules of Civil Procedure for the Superior Court.

(f) The government of Guam, agencies and instrumentalities are exempted from paying the fees prescribed in this Section.

SOURCE: GC § 28510.

CROSS-REFERENCES: For current fees, see the Guam Rules of Civil Procedure.

§ 9212. Fees From Members of Guam Bar Association.

(a) Each active member of the Bar of the Territory, as part of his or her dues for membership in the Guam Bar under the Guam Integrated Act, shall pay Fifty Dollars (\$50.00) per year to the Territorial Law Library Fund. Said contribution shall be collected with the annual dues for the Bar of Guam and transmitted by it to the Territorial Law Library Fund.

(b) The fees described in Section (a) of this Section shall be subject to revision by the rules of the Supreme Court authorized in § 9101 and § 9102 of this Chapter.

SOURCE: GC § 28511. Repealed and reenacted by P.L. 24-77:1 (Sep. 30, 1997).

§ 9213. Authority of Legislature to Augment Fund.

The Legislature may appropriate from the General Fund for the Territorial Law Library such additional sums as may in its discretion appear proper. When so appropriated such funds shall be paid to the treasurer of the Territorial Law Library for deposit in the Territorial Law Library Fund and for all purposes.

SOURCE: GC § 28512.

§ 9214. Use of Libraries. Use of Libraries.

The Territorial Law Library shall be free to all residents for the examination of books and other publications at the library.

SOURCE: GC § 28513. Repealed and reenacted by P.L. 24-77:2 (Sep. 30, 1997).

§ 9215. Furnishing of Reports, Statutes and Other Documents.

(a) The Governor shall cause to be transmitted to the Territorial Law Library at least one (1) copy of each executive order, administrative regulations and each attorney general's opinion which has been or shall be promulgated in the Territory.

(b) The Chief Justice of the Territory shall cause to be transmitted to the Territorial Law Library at least one (1) copy of every decision, opinion and order of the Supreme Court of the Territory, and at least one (1) copy of all rules promulgated by the Supreme Court of the Territory.

(c) The presiding judge of the Superior Court shall cause to be transmitted to the Territorial Law Library at least one (1) copy of every decision, opinion and order of the Superior Court, and at least one (1) copy of all rules promulgated by the Superior Court.

(d) The Speaker of the Guam Legislature shall cause to be transmitted to the Territorial Law Library at least one (1) copy each of every public law, of every vetoed bill and every bill introduced in the Guam Legislature, and at least one (1) copy of every item included in the legislative history of every bill considered by the Guam Legislature or any committee or subcommittee thereof.

(e) In addition to the materials which shall be transmitted to the Territorial Law Library pursuant to the provisions of Subsections (a) through (d), inclusive, of this Section, the Governor, the Chief Justice, the presiding judge of the Superior Court and the Speaker of the Guam Legislature shall transmit or cause to be transmitted to the Territorial Law Library any other public records which shall be designated by the Territorial Law librarian.

(f) At such time as the Compiler of Law commences its publication of any of the official documents referred to in this Section, he shall submit one (1) copy, free of charge, to the Territorial Law Library. When such publication has commenced, the officials referred to in this Section shall not be required to submit the documents stated above unless requested to do so by the Board of Law Library Trustees.

SOURCE: GC § 28514.

NOTE: The following are uncodified sections enacted as a part of P.L. 21-147 which created the Supreme Court of Guam, but which were not enacted as a part of the "Act"

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itself. The "Act" is Section 2 of P.L. 21-147 and what follows are sections 3 through 8 of the same public law.

Section 3. Reenactment of Prior Laws.

The following sections of the Code of Civil Procedure as found in Public Law 12-85 (Court Reorganization Act of 1974) are hereby re-enacted:

- § 948 (Lower courts to give effect to orders of Supreme Court);
- § 949 (Remedial powers of the Supreme Court);
- § 1108 (Writs of review, mandate and prohibition);
- § 1381 (Appeal to the Supreme Court in Insolvency Matters).

Section 4. Amendment.

[Section] 963 of the Code of Civil Procedure is amended to read:

"§ 963. When an appeal taken. An appeal to the Supreme Court may be taken from the Superior Court in any case in which the Supreme Court has jurisdiction as set forth in this Code."

Section 5.

The words *District Court of Guam*, *District Court* or *Appellate Division of the District Court* found in § 3433 (Appealable orders in probate actions), and § 4801 (Appealable orders in guardianship proceedings), both in Title 15, Guam Code Annotated, § 12121 (Appeals from judgments in elections), Title 3, Guam Code Annotated, and § 5125 (Appeals in juvenile matters), Title 19, Guam Code Annotated are amended in each case to read *Supreme Court of Guam*.

Section 6. Habeas corpus appeals.

§ 135.74 (Appeals by Attorney General), Title 8, Guam Code Annotated, is reenacted.

Section 7. General References.

Every other reference in law, rule or regulation, to the *District Court*, *District Court of Guam* or the *Appellate Division of the District Court of Guam*, when such terms refer to the appellate functions of the District Court of Guam, shall be read as and mean the *Supreme Court of Guam*.

COMMENT: The Organic Act, in authorizing the creation of a Guam appellate court, specified that the laws doing so must be enacted after the effective date of the Organic Act amendment (Jan. 1985). The above sections had been amended (and never changed) to refer to the Supreme Court of Guam established by the Court Reorganization Act of 1984. Since the U.S. Supreme Court struck down that Act, as it applied to appeals, and the Organic Act did not revive that Act, the drafters thought it best to specifically reenact these grants of jurisdiction to the Supreme Court of Guam. Thus, there will be no question as to the validity of the 1974 grants of jurisdiction, as they are affirmatively reenacted by P.L. 21-137 or amended to conform with it.

Section 8. § 28002.2 of the Government Code is amended to read:

"28002.2. Government attorneys. Any person who is a member of the bar of the highest court of any state or territory of the United States or of the District of Columbia, while representing the United States of America, the government of Guam,

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or any agency, instrumentality, officer or employee thereof, in the course of his or her official duties, may practice before the courts of Guam without being admitted to practice pursuant to either 28002 or 28002.1; provided, however, that the authority to practice without admission to the Bar of Guam shall lapse as to any person who has not taken the Guam Bar Examination within two (2) years from the commencement of his or her employment with the government or who has not been admitted to the Bar of Guam within three (3) years of the commencement of his or her employment with the government. The two-(2-) and three-(3-) year periods specified in this section shall run from the effective date of this section for persons in the employ of the government on such effective date."

COMMENT: 1. The technical amendments above (Sections 3-7) were initially Chapter 10 of the title 7 -- a final chapter to the Supreme Court Act. Section 8 is new. Technically, Section 8, by the terms of 7 GCA § 9103 and § 9104, will be repealed at such time as the Supreme Court adopts its own rules to govern the Bar of Guam and attorneys admitted to that Bar. This is because the Chapter of the government code, of which Section 8 is a part, is repealed completely by 7 GCA § 9103, located in Section 2 of this same Act.

Section 9. Severability.

If any section, subsection, or clause of this Act shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.
