

BAR OF GUAM ETHICS COMMITTEE

**RULES OF PROCEDURE - DISCIPLINARY
PROCEEDINGS**

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Rule 1. Purpose of Rules.

The purpose of these rules is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice from attorneys who have demonstrated by their conduct that they are unable or are likely to be unable to properly discharge their professional duties.

SOURCE: Proposed Draft *Standards for Lawyer Discipline and Disability Proceedings*, Joint Committee on Professional Discipline, American Bar Association, 1979 (hereinafter *ABA*, Standard 1.1).

Rule 2. Nature and Confidentiality of Proceeding.

Proceedings under these rules are sui generis and the rules of procedure for civil, criminal and administrative proceedings do not automatically apply hereto. Until the Committee has either filed its proposed order with the Supreme Court under Supreme Court Rule 2 or has issued the respondent a public reprimand, all proceedings under these rules and all deliberations of the Committee shall be confidential and private; provided, however, that the respondent may, in writing, request that any hearings be open to the general public.

SOURCE: ABA Standard 1.2; Guam Government Code (hereinafter *Gov't Code*) § 28060, now Title 7 G.C.A. § 9211.

Rule 3. Committee Functions.

The Functions of the Committee, pursuant to these rules, are:

(a) To investigate and hear all complaints brought by any source, or on its own motion, against attorneys admitted to the Bar of Guam, practicing before the courts of Guam or admitted pro hac vice to the courts of Guam, or serving as counsel for a government agency on Guam.

(b) To report and make recommendations to the Supreme Court of Guam regarding discipline of attorneys;

(c) To issue public and private reprimands of attorneys for violation of appropriate standards of professional conduct;

(d) To prosecute disciplinary matters before the Supreme Court of

Guam; and

(e) To otherwise administer the disciplinary system of the Bar of Guam.

SOURCE: Guam Public Law (hereinafter PL) 17-62.

Rule 4. Disqualification.

No member of the committee, if challenged before the introduction of evidence upon a formal hearing, or upon his own suggestion in connection with any proceeding before the Committee, shall act as hearing counsel or otherwise as a member of the Committee shall determine that such member should be disqualified. The Committee shall pass upon all challenges and suggestions of disqualification. If any member of the Committee shall be disqualified with respect to any particular proceeding, the President of the Bar of Guam with the approval of the Board of Governors of the Bar of Guam may appoint a member pro tempore for all further proceedings with respect to that matter. The member pro tempore shall be an attorney admitted in Guam, who is in good standing and who has not previously been the subject of any order imposing discipline.

SOURCE: Rules of Procedure of the State Bar of California, January, 1974, as amended, found following California Business and Professions Code § 6087 (hereinafter Calif. Rule 15, with modifications by Superior Court; Supreme Court of New Mexico Disciplinary Board Rules of Procedure, October 1983 (hereinafter N.M. Rule) 10(c)(5) & 14 (d)(1).

Rule 5. Record Keeping.

The Committee shall keep complete documentation of all disciplinary matters processed by it. In all disciplinary proceedings resulting in discipline or a recommendation to the Supreme Court for disciplinary action, the Committee shall keep a record of any evidence and proceeding therein and shall make findings of fact thereon. In disciplinary proceedings in which no discipline is imposed, the documentation thereof may be destroyed after five (5) years.

SOURCE: ABA Standard 3.12; Calif. Rule 36, with modifications by Supreme Court.

Rule 6. Informing the Public.

(a) The Committee shall inform the public no less than four (4) times a year in a newspaper of general circulation in Guam, and by such other means as the Committee may deem appropriate, of the existence and operation of the Committee and the means by which the public may make a

complaint against any attorney who is a member of the Bar of Guam.

(b) The Committee shall regularly inform the public in such manner as it may determine, of any disciplinary action taken against an attorney which results in the public discipline of a member of the Bar of Guam, other than private reprimand.

Rule 7. Statute of Limitations.

No complaint against a person subject to these rules shall be considered by the Committee unless a complaint is filed with or initiated by the Committee within six years from time the complainant knew or should have known the facts upon which the complaint is filed. The Committee may make exceptions to this rule based upon violations of the fiduciary relationship between attorney and client which are concealed from the client for substantial periods of time.

SOURCE: N.M. Rule 3 with modifications by Superior Court.

Rule 8. Grounds of Attorney 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: Gov't Code § 28055, now Title 7 G.C.A., § 9206.

Rule 9. Factors to be Considered.

(a) The discipline to be imposed or recommended by the Committee shall depend upon specific facts and circumstances of a particular matter and shall be fashioned in light of the purpose of attorney discipline as set forth in Rule 1 and may take into account aggravating or mitigating circumstances.

(b) In determining the nature and extent of the discipline to be imposed or recommended by it, the Committee shall consider:

- (i) The seriousness and circumstances of the offense;

- (ii) The avoidance of repetition;
- (iii) The deterrent effect upon others;
- (iv) The maintenance of respect for the honor and dignity of the legal profession; and
- (v) The assurance that those who seek legal services will be insulated from unprofessional conduct.

(c) The respondent's lack of remorse, his failure to cooperate with the Committee in its investigation, his failure to voluntarily make restitution to those injured by his misconduct, his failure to acknowledge and recognize the seriousness of his violation, the extent of his breach of trust and his record of his previous discipline are all factors which shall be viewed as "aggravating." On the other hand, circumstances present in a case may cause the Committee to be lenient, such as a willingness of the respondent to rectify the damage caused by the misconduct, contrition, inexperience, temporary mental aberration for which the respondent has sought treatment, and restitution made prior to the filing of a complaint.

SOURCE: ABA 7.1 & Commentary thereto.

Rule 10. Source.

A disciplinary proceeding may be initiated by the Committee upon the complaint of another person or entity or upon the Committee's own motion in light of information received or acquired from any source. There is no requirement of standing to make an ethics complaint. Neither unwillingness nor neglect of a complainant to assist in the conduct of any investigation or proceeding pursuant to these rules, nor settlement, compromise nor restitution, shall excuse the Committee from failing to undertake and complete a preliminary investigation or a formal proceeding.

SOURCE: ABA Standard 8.1.; N.M. Rule 5; Calif Rule 19.

Rule 11. Form of Complaint

Complaints and information about attorneys need not be verified or written or in any particular form.

SOURCE: ABA Standard 8.2.

Rule 12. Appointment of Prosecuting Counsel and Screening of Complaints.

(a) Immediately upon receiving a complaint or information about an attorney, the Chairman shall appoint an attorney to screen it to determine whether it concerns an attorney admitted to practice in Guam and alleges facts which, if true, would constitute misconduct under these rules. The appointed attorney shall be known as the "Prosecuting Counsel." The Chairman may appoint a counsel member as Prosecuting Counsel as necessary because of conflicts of interest.

(b) After the prosecuting counsel has screened the complaint or information and before the investigation of such complaint or information has commenced, the prosecuting counsel shall report to the Committee with his preliminary findings. The Committee shall thereupon determine whether or not the complaint or information screened by the prosecuting counsel warrants further investigation or action by the Committee or prosecuting counsel.

SOURCE: Original.

Rule 13. Investigation by Prosecuting Counsel.

Upon the authorization and instruction of the Committee, as provided in Rule 12, the prosecuting counsel shall investigate any complaint or information that concerns an attorney admitted to practice in Guam ("respondent,) that alleges facts which, if true, would constitute misconduct. Prosecuting counsel may, with the approval of the Committee pursuant to Rule 27, subpoena witnesses and evidence in the course of his investigation. At any time during the course of the investigation upon learning of facts or circumstances clearly exonerating the respondent, the prosecuting counsel shall inform the Committee of such information and recommend a dismissal of the proceeding.

SOURCE: ABA Standard 8.5; Gov't Code § 28054(a).

Rule 14. Notice to Respondent.

Prosecuting counsel shall not recommend a disposition of a matter other than by dismissal or stay without first notifying the respondent in writing of the substance of the matter, affording him the opportunity to appear before the Prosecuting counsel and to present his position and including in any report to the Committee the substance of the respondent's position on the matter. The respondent shall present his position to Prosecuting Counsel orally or in writing within thirty (30) days after receipt of the letter from Prosecuting Counsel required by this rule.

SOURCE: ABA Standard 8.8.

Rule 15. Recommendation by Prosecuting Counsel.

The initial recommendation for disposition of a matter following investigation shall be made by the hearing counsel not later than sixty (60) days after receipt of the respondent's response to the letter from Prosecuting Counsel required by Rule 14, unless extended by the chairman.

SOURCE: ABA Standard 8.9; 60 days Original.

Rule 16. Disposition following Investigation-Criteria.

Following investigation by the hearing counsel, a matter may be disposed of by:

(a) Dismissal, if there is no probable cause to believe misconduct has occurred;

(b) Reprimand, public or private, in the discretion of the Committee, if there is probable cause to believe misconduct has occurred, but the misconduct is minor and isolated;

(c) Initiation of a formal disciplinary proceeding, if there is probable cause to believe misconduct has occurred and the misconduct is neither minor nor isolated, or respondent does not agree to a recommended reprimand, or

(d) A stay, if there is a pending civil proceeding in which the respondent is a party, a criminal proceeding in another jurisdiction in which the respondent is the subject; provided that the other proceeding involves substantially the same matter as the disciplinary proceeding; and provided also that the Committee determines the stay is appropriate. A stay is discretionary and is appropriate only in extraordinary circumstances.

SOURCE: ABA Standard 8.10.

Rule 17. Disposition-Procedure.

The recommendation of the prosecuting counsel for disposition of a matter shall be reviewed by the Committee which may approve, modify or disapprove the recommendation or direct that the matter be investigated further. The prosecuting counsel shall be disqualified from voting on any consideration of the matter.

SOURCE: ABA Standard 8.11.

Rule 18. Notification of Complainant.

The complainant shall be notified, by the prosecuting counsel, in writing, within a reasonable time of the disposition of the matter.

SOURCE: ABA Standard 8.14, with modifications by Superior Court.

Rule 19. Reprimand-Imposition.

(a) The Guam Bar Ethics Committee may administer a private reprimand by the procedures created by Rule 19 of the Committee's Rules Government Disciplinary Proceedings, by stipulation of the parties or after a formal hearing on the merits conducted in accordance with Rule 28 of said rules. If the Committee decides to administer a private reprimand after a formal hearing, its decision shall be final unless the Respondent appeals the matter to the Supreme Court of Guam.

(b) A Respondent who has been given a private reprimand after a formal hearing may appeal the matter to the Supreme Court of Guam by filing a copy of the Committee's Findings of Fact and Conclusions of Law and a statement of objection thereto in accordance with Rule 2 of these rules within twenty days after he is served with the Findings of Fact and Conclusions of Law. Thereafter, the case shall proceed in the same manner as other ethics proceedings in accordance with these rules. The case shall not be sealed and shall be a matter of public record.

(c) A Respondent who appeals a private reprimand shall pay the docketing fee required by Rule 2.

SOURCE: S.Ct. N.M. Rule of Discipline 17-308.

Rule 20. Specification of Charges.

(a) A formal disciplinary proceeding shall be instituted by the prosecuting counsel in the name of the Bar of Guam by a filing of a specification of charges ("specification") with the Committee and the issuance by the Committee of a formal notice to the respondent pursuant to Rule 20(c).

(i) Any number of acts or omissions or transactions alleged to constitute misconduct by respondent may be set forth in the specification.

(ii) A specification may issue directed to two or more respondents when the alleged misconduct of each of them arises out of the same

statement of alleged facts.

(iii) Formal proceedings upon two or more alleged incidents of wrong doing directed to the same respondent may be consolidated at any stage by the Committee.

(b) The specification shall contain:

(i) A brief and plain statement of the charge, or if more than one, each of the separate charges of professional misconduct asserted against the respondent;

(ii) The provision or provisions of the Model Rules of Professional Conduct, courts rules, statutes or other laws alleged to have been violated; and

(iii) The names and addresses of all known witnesses against the respondent;

(c) Upon the filing of the specification, the Committee shall serve upon respondent written notice thereof, which notice shall advise him that formal charges of unprofessional conduct have been instituted against him and have been referred to the Committee, giving the names and addresses of the Committee members and the Chairman. The notice shall formally advise the respondent of the following:

(i) That he has the right to file an answer to the specification;

(ii) That the facts alleged in the specification shall be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time;

(iii) That the respondent has the right to be represented by counsel, to appear at all hearings, to confront and cross-examine the witnesses against him and to present relevant evidence on his own behalf;

(iv) That he has a right to the assistance of subpoenas to be issued at his request and to discovery in accordance with these rules; and

(v) That he has the right to object to the qualification of any Committee member by setting forth the facts which establish that such member cannot impartially decide the matter.

SOURCE: N.M. Rule 20(a); Calif; Rule 27; Calif. Rule 20(b) & (c); N.M. Rule 10.

Rule 21. Answer.

(a) Within twenty (20) days after service of the specification, the respondent may file an answer to the specification with the Committee. For good cause shown within that twenty (20) day period, the Chairman may extend the time for filing an answer.

(b) The written answer of the respondent shall contain:

(i) A brief and plain statement reflecting his admissions, denials, defenses, and any other relevant and material matter he wishes to convey concerning each of the factual charges against him;

(ii) any matter in mitigation in connection with any admitted violations;

(iii) The names and addresses of the witnesses the respondent proposes to call in his defense; and

(iv) Respondent's address to which all subsequent notices and papers shall be served by registered mail.

(c) In lieu of such form of answer, the answer may consist of:

(i) A general statement that respondent admits the allegations of the specification; and

(ii) Allegations of extenuating or mitigating circumstances.

(d) If respondent fails to answer, the Committee shall enter a default of the respondent in the same manner as in civil actions and thereafter, notwithstanding any other provisions of these rules, respondent shall not be entitled to further notice or to appear and be heard at subsequent proceedings. Thereafter, the sole issue to be determined by the Committee shall be the nature of the Committee's recommendation of discipline to the Supreme Court after consideration of any facts in aggravation or mitigation of the respondent's fault.

(e) For good cause shown within a reasonable time, the Committee may set aside respondent's default, with or without conditions and make such orders as to further proceedings as are appropriate.

SOURCE: Rule 2 1(a); Calif. Rule 32 with modifications by Superior Court; Rule 21(b); N.M. Rule 11; Rule 21(c); Calif. Rule 33; Rule 21(d); N.M. Rule 10(c); Rule 21(e); Calif. Rule 32(b), with modifications by Superior Court.

Rule 22. Amendments to Pleadings.

The Committee at any time may allow or require amendments to the specification or may allow amendments to the answer. The specification may be amended to conform to proof or to set forth additional facts whether occurring before or after commencement of the hearing. In the event such an amendment is made, the respondent shall be given reasonable time to answer the amendment and to prepare his defense against the misconduct charged thereby.

SOURCE: Original.

Rule 23. Service of Papers.

(a) The specification and notice shall be served upon the respondent by sending a copy to him by certified or registered mail, return receipt requested, to his latest address shown by the member's registration records with the Bar of Guam.

(b) Answer to the specification or any amendments thereto shall be served by delivering the original and six (6) copies thereof to the Committee and prosecuting counsel. Service of all papers upon the Committee shall be made as may be provided for by the Supreme Court rules governing disciplinary proceedings.

(c) A subpoena shall be served by delivering the original to the person addressed therein.

SOURCE: Calif. Rule 31 with modifications, amended by Superior Court.

Rule 24. Discovery.

At any time after service of the specification pursuant to Rule 20, and upon written request directed to the opposing party, either party shall be permitted to discover the following:

- (1) The written statement of any person including the complaining party whom the party intend to call as a witness;
- (2) Any report of an expert witness; and
- (3) Photocopies or other duplicate originals of any papers, document, photograph or tangible object, which the party intends to use at the hearing.

At any time after service of the specification pursuant to Rule 20, and

upon affidavit showing good cause, either party may move for leave to take the deposition of a witness for the exclusive purpose of perpetuating testimony or to shorten the hearing. Such depositions shall be taken pursuant to the Guam Rules of Civil Procedure.

SOURCE: Guam Criminal and Correctional Code § 70; Second Paragraph Original.

Rule 25. Motions, Pre-hearing Conference, Supplemental Witness Lists.

(a) *Motions* - All pre-hearing motions shall be filed with the Committee no later than fifteen (15) days before the date set for the formal hearing. Service shall be made on the Committee as provided in Rule 23(b) and on opposing counsel. Any opposition shall be filed and served within five (5) days thereafter. Unless the Chairman orders other wise, all pre-hearing motions shall be submitted for decision by the Chairman without oral argument; provided, however, that no motion to dismiss shall be granted except on the affirmative vote of four (4) members of the Committee.

(b) *Pre-Hearing Conference* - the Chairman may, if he deems it necessary, schedule a pre-hearing conference with prosecuting counsel and respondent to clarify the issues, and encourage stipulations or admissions of fact.

(c) *Supplemental Witness Lists* - If after the filing of the specification and the answer, a party discovers additional material witnesses whom the party intends to call to testify at the hearing, the party shall promptly give notice to the other party of the names and addresses of the additional witnesses.

SOURCE: N.M. Rule 13, with modifications.

Rule 26. Stipulations and Admissions.

Whenever it may be done without prejudice to the interests of the respondent and the Bar of Guam, stipulations and admissions dispensing with formal proof shall be encouraged; provided, however, that any recommendation or action as to discipline or the determination of any other issue shall not be influenced on any way by the fact that some or all of the material facts have been established by admission or stipulation instead of other methods of proof. It shall be the duty of the prosecuting counsel, whenever practicable, to confer prior to trial with respondent's counsel, or with respondent if he appears without counsel, to explore the possibility of

simplifying the issues of fact and attempt to arrive at stipulations covering facts not in dispute. The stipulations of fact shall be admissible in the discretion of the Committee; provided, however, that in the interests of justice the Committee may relieve either party of the effect of a stipulation.

SOURCE: Calif. Rule 34.1.

Rule 27. Subpoena Power.

(a) At any stage of a proceeding under these rules, the Committee may issue a subpoena for the production of records and other documents as well as requiring the presence and testimony of witnesses under oath. Respondent shall have notice of any subpoena issued after the filing of the specification and shall have the right to be present to cross-examine witnesses.

(b) At the request of either the hearing officer or the respondent, the Committee may issue subpoenas:

(i) Requiring the presence of witnesses at the formal hearing before the Committee. The subpoena shall set forth the time and place at which the witness is to appear;

(ii) Commanding the person to whom it is directed to produce before either the Committee or the prosecuting counsel and books, papers, documents or tangible things designated therein. The subpoena shall set forth the time and place at which the person is to appear with the documents.

(c) No subpoena shall be issued pursuant to this rule unless it sets forth:

(i) The reason or purpose for the investigation or hearing;

(ii) With reasonable definiteness, any records or other documents to be produced which are relevant to the investigation or hearing; and

(iii) A statement that the witness has a right to be accompanied by an attorney.

(d) If any person fails to comply with the subpoena issued by the Committee in accordance with the provisions of this rule or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, the prosecuting counsel, may apply to the Supreme Court for an order directing that person to take the requisite actions. The Supreme Court may issue such

order or may quash the subpoena. Should any person wilfully fail to comply with an order of the Supreme Court, the court may punish such person for contempt of court. Any person who has been served with a subpoena pursuant to this rule may apply to the Supreme Court for an order to quash such subpoena.

SOURCE: N.M. Rule 7 with modifications.

Rule 28. Hearing.

(a) Within thirty (30) days after the expiration of time for filing an answer, the Chairman shall set a time and date for the formal hearing on the specification. The formal hearing shall be set no later than sixty (60) days from the date of expiration of the time for filing an answer. Upon a showing of good cause, the Chairman may extend the time for commencement of the hearing.

(b) The Chairman shall give prompt written notice of the time and place of the hearing to the parties.

(c) The Chairman shall arrange for the making of a record of the hearing. The expense for the record shall be paid for by the Committee but may be thereafter assessed against the respondent pursuant to the Rules of the Supreme Court.

(d) Formal hearings will proceed in the following manner:

(i) Formal hearings will be adversarial in nature, prosecuted by the prosecuting counsel and determined by the concurrence of at least four (4) Committee members. Formal charges shall be established by clear and convincing evidence.

(ii) All witnesses shall be sworn.

(iii) Prosecuting counsel shall present evidence in support of the allegations in the specification. Respondent may thereafter present evidence on his behalf. Prosecuting counsel may rebut respondent's evidence. Respondent and prosecuting counsel shall each have the right to cross-examine witnesses.

(iv) The Chairman shall preside and shall make rulings upon questions of admissibility of evidence and the conduct of the hearing. The rules of evidence as set forth in Title 6 G.C.A. shall generally apply, but the Committee may receive and consider any reasonably competent, cogent and credible evidence.

(v) Committee members may ask questions of any witness, including the respondent, at any stage of the hearing.

(vi) The respondent shall appear in person, and he may be represented by an attorney. Unexplained or unexcused failure of respondent to appear shall be a factor to be considered by the Committee under Rule 9 in determining the imposition or recommendation of discipline.

(vii) Hearings may be adjourned from time to time at the discretion of the Chairman.

(viii) The complaining witness or witnesses, the respondent and prosecuting counsel may be present throughout the formal hearing. Other witnesses may be excluded except when testifying, at the discretion of the Chairman.

SOURCE: N.M. Rule 14.

Rule 29. Disposition.

Within ten (10) days after the conclusion of the hearing, both parties shall have the right to submit proposed findings of fact and conclusions of law after which the Committee shall consider the case and shall within thirty (30) days after the requested findings and conclusions are submitted, prepare, and sign and transmit to the Supreme Court an order containing recommendations for discipline or other disposition of the matter.

SOURCE: N.M. Rule 14(d)(8).

Rule 30. Definitions.

(a) Chairman. *Chairman* as used in these rules, shall mean the Chairman of the Bar of Guam Ethics Committee. In the event of disability or other absences or such person, "Chairman" shall mean the Vice-Chairman of the Committee or such other person designated by the remaining members of the Committee to act as chairman pro tempore.

(b) Committee. *Committee*, as used in these rules, shall mean the Ethics Committee of the Bar of Guam. Except as otherwise provided herein, the Committee shall act by the affirmative vote of a majority of its members at a meeting at which a quorum is present.

(c) Respondent. *Respondent* means the attorney whose conduct is the subject of a disciplinary or disability proceeding.

(d) Record. *Record*, as used in Rules 5 and 28(c), means:

(i) either a statement of facts and proceedings stipulated to by the parties for purposes of review or,

(ii) a transcript of the proceedings; and

(iii) exhibits used at the proceeding.

SOURCE: 30(c); N.M. Rule 14.