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**Commission on Lawyer Regulation**  
**and**  
**Regulation Counsel Caseload Processing**  
**Annual Report**

March 29, 2021 to December 31, 2022

**Commission on Lawyer Regulation and Regulation Counsel Caseload Processing  
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**I. COMMISSION ON LAWYER REGULATION**

**1. Introduction**

On August 1, 2021, the Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings (hereafter, “Rules”, or “*GRLDEDP*”), enacted by the Supreme Court of Guam on March 29, 2021, came into full effect. These Rules establish a comprehensive lawyer regulatory system, to include the processes and the mechanisms for the enforcement of ethics of lawyers practicing on Guam.

Among other bodies, the Rules establish the Commission on Lawyer Regulation, charged with administering the Comprehensive Lawyer Regulatory System pursuant to the Rules. An Annual Report from the Commission on Lawyer Regulation is required by the Rules. *See* Rules, 2(d)(1) and 5(b)(17).

This Annual Report is to include a description of the disciplinary system and its operations, including caseload processing information for the year. Caseload processing data includes: (1) timeline processing information; (2) the number of complaints filed; (3) the number of complaints screened out; (4) the number of complaints investigated; (5) the number of cases dismissed; (6) public disciplinary actions taken and private sanctions imposed; and (7) diversionary dispositions. Additionally, the Report is to include such other information that may be helpful to the public and the profession in comprehending the operations of the system as well as its efficiency and effectiveness.

Concomitant with the required Annual Report, the Commission is to periodically review the functioning of the Comprehensive Lawyer Regulatory System and submit reports to the Court; which may include proposed amendments to these Rules, the Guam Rules of Professional Conduct, or other Court rules. *See* Rule 2(d)(1). We complete this requirement in this Annual Report.

**2. Implementation of the Rule**

On March 29, 2021, the Supreme Court of Guam appointed the five members of the Commission on Lawyer Regulation (the Commission), composed of three lawyers licensed to practice on Guam and two members of the Public. Upon appointment, the Commissioners were empowered to act. *See* Order of Supreme Court, March 29, 2021, Appointing Commission Members.

**3. Meetings**

Beginning on April 12, 2021 and up to December 31, 2022, the Commission on Lawyer Regulation has held twenty-six meetings. There is an approved set of minutes for each meeting. There have been seven regular quarterly meetings and nineteen special meetings (as so designated by the Bylaws).

The Commission is grateful to the Supreme Court for providing the Commission with a staff person to serve as the Assistant Secretary and assist the Secretary and the entire Commission in this regard.

**4. Identification and Recommendation of Investigative Committee and Hearing Panel Members**

The first order of business for the Commission was to recommend to the Justices of the Supreme Court potential members for both the Investigative Committee and the Hearing Panel. *See* Rule 2(d)(3). Each of these bodies was to contain five lawyers licensed to practice on Guam and two members of the public. The recommendation to the Supreme Court needed to be made in a timely manner so that the Court could make the necessary appointments by August 1, 2021.

The deliberative process undertaken by the Commission began on April 14, 2021 and concluded by July 1, 2021. On that date, the Commission sent its Confidential Memorandum, dated July 1, 2021, to the Chief Justice and Associate Justices of the Supreme Court. The memorandum of July 1, 2021 set out both the specific process undertaken by the Commission to identify, interview and nominate members, and the

nomination of specific persons, both lawyers and public persons, for both the Investigative Committee and the Hearing Panel.

Subsequent to the July 1, 2021 submission of recommended members for the Investigative Committee and the Hearing Panel, the Court requested the Commission to submit the names of two additional attorneys for consideration to serve the Hearing Panel. On July 14, 2021, the Commission submitted to the Court its recommendation of two additional lawyers.

On July 26, 2021, the Supreme Court issued its Order appointing members and alternate members to the Investigative Committee and the Hearing panel. *See* July 26, 2021 Order of Supreme Court Appointing Members to the Investigative Committee and the Hearing Panel.

Shortly after the formal appointment of members to the Investigative Committee and the Hearing Panel, the Chair of the Investigative Committee advised the Commission of the resignation of one public member of that committee and recommended that an alternate public member who was actively serving on the committee in the place of the member who resigned, be appointed in her place. On August 30, 2021, the Commission sent a Confidential Memorandum to the Supreme Court nominating individuals to replace the alternate public member on that committee.

On September 1, 2021, the Supreme Court issued its Amended Order appointing members and alternate members to the Investigative Committee and the Hearing panel. *See* September 1, 2021, Amended Order of Supreme Court Appointing Members to the Investigative Committee and the Hearing Panel.

The members appointed by the Supreme Court to the Commission on Lawyer Regulation, the Investigative Committee and the Hearing Panel, in 2021, continue to serve in the capacities to which they were appointed. It is noted that appointments are intended to be for a four-year term. However, in this initial appointment process, the Supreme Court made approximately half of the appointments for a two-year period in order to effect staggered four-year appointments going forward.

The next appointments to the Commission are expected to be made in March 2023, and the next appointments to the Investigative Committee and Hearing Panel are expected to be made in July 2023, and will be to fill those positions of persons originally appointed for two years. Appointments going forward are anticipated to occur every two years, and anticipated to be four-year appointments.

**5. Bylaws**

The Bylaws of the Commission on Lawyer Regulation were entered into and effective as of May 17, 2021. The First Amended and Restated Bylaws of the Commission on Lawyer Regulation were entered into and effective as of January 24, 2022.

Vice-Chair Sirena P. Cassidy is credited with initially taking on and completing the first comprehensive draft of these bylaws and of the amended bylaws.

**6. Inform the Public**

In part, Rule 2(d)(5) of the Rules states “(t)he Commission 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 Commission may deem appropriate, of the existence and operation of the lawyer discipline system and the means by which the public may make a complaint against a lawyer;”

The Commission published one advertisement in calendar year 2021, on December 30, 2021 in the Guam Daily Post. The Commission published four advertisements in 2022; on April 20, 2022 in the Pacific Daily News; on September 8, 2022 in the Guam Daily Post; on December 30, 2022 in the Guam Daily Post; and on December 31, 2022 in the Guam Daily Post.

Although the Commission met its obligation in 2022 to inform the public no less than four (4) times a year in a newspaper of general circulation in Guam, it did so by publishing two advertisements on the final two days of the year.

Under the leadership of Regulation Counsel, a website for the Office of Regulation Counsel, which will include information on the System and the Component Entities including the Commission, is currently under construction. The website is intended to be an outreach facility promoting the existence and operation of the lawyer discipline system and the means by which the public may make a complaint against a lawyer. This website is set to launch in April 2023.

Much work has also been accomplished since September 2021 to establish procedures, organize record-keeping, and upgrade the electronic capabilities of the Office of Regulation Counsel, including work on the initial development stages of a case management system and the electronic storage of current and past records of the office and its predecessor.

## **7. Training**

Regulation Counsel conducted training meetings with the Investigative Committee, the Hearing Panel, and the Commission on Lawyer Regulation on December 7, 2021, April 15, 2022, and April 20, 2022, respectively, via the Zoom platform. Regulation Counsel presented an overview of the *GRLDEDP* adopted by the Supreme Court of Guam and which became effective on August 1, 2021.

Related issues have been and continue to be discussed by Regulation Counsel at future meetings, including the new/additional duties and responsibilities of the Office of Regulation Counsel and other Component Entities of the Comprehensive Lawyer Regulatory System, the processes and procedures relative to lawyer discipline and disability matters within the Comprehensive Lawyer Regulatory System, and the status of matters/cases transferred from the former Office of the Ethics Prosecutor and any new matters/cases referred to the Office of Regulation Counsel.

Regulation Counsel was formally invited to present at The District Court of Guam, Judiciary of Guam, and Pacific Judicial Council Biennial Conference held in Guam in September 2022. Regulation Counsel participated as a member of an ethics

panel discussion alongside Ninth Circuit Judge M. Margaret McKeown, with Guam Bar President Jacqueline Terlaje as facilitator.

In addition to an overview of our *GRLDEDP* and Comprehensive Lawyer Regulatory System, Regulation Counsel's presentation included certain topics which impact attorneys directly, to include clarifying the good standing certificate request and the resignation while in good standing process, suggested guidance for Rule 28 Counsel appointments regarding duties/responsibilities, and, in minor disputes or concerns about an attorney where a person does not want to file a complaint but is requesting assistance - - implementing a request for assistance process and form which would address communication, access to client files, and billing statement issues.

Further, Regulation Council has identified at least four online webinars from the American Bar Association (ABA) that are free for members of the ABA. There is likely a cost for lawyers who are not ABA members and for public members.

As part of the transition process from the former Guam Bar Ethics Committee system and Office of the Ethics Prosecutor to the new Comprehensive Lawyer Regulatory System and Office of Regulation Counsel, Regulation Counsel held two meetings in October 2021 and March 2022, with Chief Justice F. Philip Carbullido and Commission Chair John Weisenberger on the status and progress of this transition.

## **8. Budget**

On May 1, 2021, the Commission submitted its first budget request to the Supreme Court, for itself, the Office of Regulation Counsel, the Investigative Committee and the Hearing Panel. This budget was for Fiscal Year (FY) 2022. *See* Rules, at 2(e). Although the budget for the Unified Judiciary of Guam is due on May 1<sup>st</sup> of each year for the succeeding fiscal year (pursuant to § 2102, Chapter 2, Title 7 of the Guam Code Annotated), due to the timing of the creation of the Commission, this submittal served as informational and included the potential budget for the Commission based on certain assumptions made at that time.



A memorandum from Chief Justice Carbullido to the Commission, dated July 13, 2021, states that an assessment of \$36,000.00 from the Guam Bar Association (“GBA”) to the Judiciary of Guam is to be used to cover non-personnel costs of Regulation Counsel and the Commission, including partial office rental costs. The memorandum states that the GBA may be separately assessed the cost of office equipment, website development and modernization software for case management, for which the GBA previously agreed to pay.

Subsequently, a letter from the Chief Justice of the Supreme Court, dated September 10, 2021, to the President of the GBA, acknowledges a meeting held on September 9, 2021 between the Chief Justice, the Board of Governors of the GBA and the Commission. The Chief Justice requested the official copies of the financial statements of the GBA from 2016 to the present. He also advised the GBA President of the \$36,000.00 assessment that the GBA is required to pay the Judiciary of Guam to provide financial support to the Comprehensive Lawyer Disciplinary System.

On March 25, 2022, the Commission submitted its budget request for FY 2023 to the Justices of the Supreme Court. The preparation of this budget was guided by the Treasurer, Artemio “Ricky” Hernandez, and was regularly discussed at Commission meetings during the year.

**9. Publication of Suspension Decisions**

On July 18, 2022, the Chairperson of the Commission, among others, was reminded by Regulation Counsel of her April 20, 2022 email notifying the Chairperson of the Commission that nine suspension actions required publication on the Guam Bar Association website and in a newspaper of general circulation. *See Rules*, at Rule 17.

As of the date of this Report, these publications have not taken place. This must be addressed by the Commission immediately, in 2023.

**10. Proposed Rule Changes**

After implementation of the Rules, the Commission and/or Regulation Counsel

encountered issues that are not adequately covered or addressed under the Rules. The Commission and Regulation Counsel are currently reviewing six Rules, which may require amendment. These are:

Rule 18(j). Disqualification of Regulation Counsel Due to Conflict.

Rule 18. Additional Rules of Procedure and Access to Sealed/Confidential Court Records.

Rule 8(i) and Guam Bar Association Rules at Rule 2, Section (4). The meaning of “good standing” as applied to request for a letter declaring such, and the processes for Resignation, Readmission, and Reinstatement.

Rule 28. Appointment of Counsel to Protect Clients’ Interest when Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.

Rule 2(d)(5). Amend to provide for Newspaper Advertisement at least Quarterly instead of at least four times a Year.

Rule 5(b)(4) and (18). Regulation Counsel Powers and Duties and deleting the provision regarding a copy of written guidelines for dismissal.

The Commission on Lawyer Regulation is working with Regulation Counsel and preparing several rule change recommendations for transmission to the Supreme Court of Guam.

## **II. REGULATION COUNSEL**

### **1. Report of Regulation Counsel on Caseload Processing Information**

This caseload processing information consistent with Rule 5(b)(17) is drawn from the complete Annual Report of the Office of Regulation Counsel, August 1, 2021 - December 31, 2022.

## **Caseload Processing Information**

The following illustration and information provide a general overview of the lawyer disciplinary process and timeline processing information. Please refer to the *Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings* (“*GRLDEDP*”) for details regarding the disciplinary process.

Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

### **Screening or Evaluation:**

Upon receipt of information via a complaint or from other sources alleging lawyer misconduct or incapacity, and upon establishment of the Supreme Court of Guam’s (“Court”) jurisdiction, Regulation Counsel screens or evaluates the information. If the information, if true, would not constitute misconduct or incapacity, the matter may be referred to any of the Comprehensive Lawyer Regulatory System components, or dismissed. If the information alleges facts which, if true, would constitute misconduct or incapacity, with the approval of the Investigative Committee, Regulation Counsel will conduct an investigation. During this screening or evaluation stage, requests for information from the complainant and/or the lawyer may be made.

### **Investigation:**

Upon conclusion of an investigation, Regulation Counsel may recommend to the Investigative Committee:

- (a) Dismissal;
- (b) A private admonition, the filing of formal charges, the petitioning for transfer to disability inactive status, or a stay.

### **Notice to Respondent:**

Regulation Counsel will not recommend a disposition other than dismissal or stay without first notifying the respondent in writing of the substance of the matter, and will

provide the lawyer with a copy of the complaint and afford the lawyer an opportunity to be heard in writing.

Regulation Counsel's recommended disposition of a matter will be reviewed by the Investigative Committee, which may approve, modify, or disapprove the recommendation or direct that Regulation Counsel investigate further.

**Alternatives to Discipline Program:**

In a matter involving lesser misconduct as defined by the *GRLDEDP*, before the filing of formal charges, Regulation Counsel may refer the respondent to the Alternatives to Discipline Program. The Alternatives to Discipline Program may include fee arbitration, arbitration, mediation, law office management assistance, lawyer assistance programs, psychological counseling, continuing legal education programs, ethics school, or any other program authorized by the Court.

**Hearing:**

If a matter is to be resolved by a formal proceeding, Regulation Counsel will prepare formal charges in writing, with the approval of the Investigative Committee, and shall file the charges with the chair of the Hearing Panel and cause a copy of the formal charges to be served upon the lawyer, to which the lawyer may file a written answer.

The process includes a mandatory prehearing conference. If a matter proceeds to a hearing, the hearing will be recorded. The Hearing Panel will submit its report containing its findings and recommendation on dismissal or sanction to the Court.

**Review by the Court:**

The Court may, within its discretion, review a matter if the lawyer or Regulation Counsel files objections to the Hearing Panel's report or if a majority of the Court votes to review the matter. If the Court does not review the matter, the Court shall impose the sanction.

Upon conclusion of the proceedings, the Court shall promptly enter an appropriate

order. If new evidence warranting a reopening of the proceeding is discovered, the case may be remanded to the Hearing Panel.

**Additional Rules of Procedure:**

Except as otherwise provided in these rules, the *Guam Rules of Civil Procedure* and the *Guam Rules of Evidence* regarding civil nonjury matters shall generally apply in discipline and disability cases; however, the Hearing Panel may receive and consider any reasonably competent, cogent, and credible evidence.

**Standard of Proof:**

Formal charges of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

**Burden of Proof:**

The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on Regulation Counsel. The burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status is on the respondent.

**2. Report of Regulation Counsel on Caseload Processing Statistical Information**

Additional caseload processing statistical information for the reporting period from August 1, 2021 to December 31, 2022, includes:

- Number of complaints filed or ethics complaint (“EC”) matters or cases open or pending through December 31, 2022: 51
  - Number of complaints filed or EC matters or cases open or pending before August 1, 2021 under the former Guam Bar Ethics Committee and the Office of the Ethics Prosecutor, which were transferred on August 1, 2021 to the newly established Comprehensive Lawyer Regulatory System including the Office of Regulation Counsel: 22

- Number of new complaints filed or EC matters or cases open or pending with the Office of Regulation Counsel between August 1, 2021 to December 31, 2022: 29
- Number of complaints or EC matters or cases screened or evaluated: 39
- Number of complaints or EC matters or cases investigated: 16
- Number of complaints or EC matters or cases withdrawn: 1
- Number of complaints or EC matters or cases dismissed: 22
- Public disciplinary actions taken and private sanctions imposed: 3
- Diversionary dispositions: 0
- Number of attorney discipline cases (“ADC”) with orders of the Court relative to payments of restitution, costs, or fees open or pending through December 31, 2022: 4
- Number of attorney discipline cases (“ADC”) with orders of the Court appointing counsel under *Rule 28 of the GRLDEDP (Appointment of Counsel to Protect Clients’ Interests when Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies)*: 3
- Number of petitions for resignation while in good standing filed by lawyers under *Rule 8(i) of the GRLDEDP*: 10
- Number of complaints referred to the Judicial Discipline System of the Court: 4

Further, the Office of Regulation Counsel received many inquiries from lawyers and the public regarding the lawyer discipline system and process, including the procedure for filing a complaint, the status and disposition of complaints, requests for lawyer disciplinary history, requests for certificates of good standing, and lawyer referral services. Inquiries and complaints regarding judges or judicial officers submitted to the Office of Regulation Counsel were referred to the Judicial Discipline System of the Court.