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Supreme Court of Guam, Clerk of Court

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**IN THE SUPREME COURT OF GUAM**

<b>IN RE:</b>	)	Supreme Court Case No. ADC22-001
	)	Ethics Case No. EC15-013
<b>Mark S. Smith, ESQ.</b>	)	
	)	
	)	<b>ORDER TERMINATING</b>
	)	<b>INTERIM SUSPENSION;</b>
	)	<b>DISCHARGING RULE 28 COUNSEL</b>
	)	
	)	

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This matter comes before the court on the Motion Re: Termination of Interim Suspension and Declaration of Counsel, both filed on January 4, 2023, under seal, by Regulation Counsel as approved by the Investigative Committee of the Comprehensive Lawyer Regulatory System. Regulation Counsel recommends that the interim suspension of Respondent Mark S. Smith (“Respondent”) be terminated. Also before the court is the Report of Rule 28 Counsel, filed December 19, 2022, wherein Rule 28 Counsel seeks guidance as to whether counsel’s appointment should continue. Report (Dec. 19, 2022).

On April 8, 2022, this court issued an order of interim suspension upon Respondent on the recommendation of Regulation Counsel and the Investigative Committee. The bases underlying that order were Ethics Case No. EC15-013 and the related criminal case in the District Court of Guam, CR17-00020. Under the Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings, as adopted March 16, 2021 (“GRLDEDP”), Attorney Seth Forman was appointed to serve as Rule 28 Counsel to carry out the duties and responsibilities of Respondent



1 specified in GRLDEDP Rule 27, and any other duties assigned to Rule 28 Counsel. Order (Apr.  
2 8, 2022).

3 Regulation Counsel advises that, on December 8, 2021, Respondent was found guilty by  
4 a jury of 26 counts of wire fraud, one count of conspiracy to commit wire fraud, one count of  
5 theft of government property, three counts of money laundering, two counts of laundering  
6 monetary instruments, and one count of conspiracy to commit money laundering. Mot. at 2 (Jan.  
7 4, 2023) (citation omitted). Respondent moved for a judgment of acquittal on all counts or for a  
8 new trial or arrest of judgment. *Id.* On June 3, 2022, the District Court granted the motion for  
9 acquittal on certain charges, and on August 26, 2022, granted Respondent's motion for acquittal  
10 on all remaining charges. *Id.* at 3. The Government moved for reconsideration, which the District  
11 Court denied. *Id.* The District Court's judgment of acquittal and notice of entry of judgment of  
12 acquittal were filed December 21, 2022. *Id.*

13 Rule 19 of the GRLDEDP provides:

14 (d) Immediate Interim Suspension.

15 The Court has exclusive power to place a lawyer on interim suspension.

16 (1) Imposition. The Court shall place a lawyer on interim suspension  
17 immediately upon proof that the lawyer has been found guilty of a serious crime  
18 regardless of the pendency of any appeal.

19 (2) Termination. The Court has exclusive power to terminate an interim  
20 suspension. In the interest of justice, the Court may terminate an interim  
21 suspension at any time upon a showing of extraordinary circumstances, after  
22 affording Regulation Counsel notice and an opportunity to be heard.

23 GRLDEDP Rule 19(d). Subsection (f) of the same rule provides:

24 (f) Automatic Reinstatement from Interim Suspension upon Reversal of  
25 Finding of Guilt or Conviction.

26 If a lawyer suspended solely under the provisions of paragraph (d)  
27 demonstrates that the underlying finding of guilt or conviction has been reversed  
28 or vacated, the order for interim suspension shall be vacated and the lawyer placed  
on active status. The vacating of the interim suspension will not automatically

