

IN THE SUPERIOR COURT OF GUAM

APR 6 3 32 PM '04

GUAM BAR ETHICS COMMITTEE,

Petitioner,

vs.

LEON G. MAQUERA,

Respondent.

SPECIAL PROCEEDINGS CASE
NO. SP0075-94

AMENDED JUDGMENT

This matter having been considered by the court after a hearing on the merits, and the court having determined that Respondent has violated Rules 1.5 and 1.8 of the Model Rules of Professional Conduct, and the court having determined it should modify its previous Judgment in accordance with its Decision and Order of January 4, 2000, the court imposes the following discipline on Respondent Leon G. Maquera:

1. Respondent shall be suspended from the practice of law for a period of two years. All but one hundred twenty days of the two year suspension shall be suspended if Respondent performs all of the other terms and conditions imposed herein. If Respondent fails to perform said conditions he shall serve the remainder of the suspension.
2. During the two year suspension, Respondent shall take and achieve a passing grade on the Multi-State Professional Responsibility Examination.
3. Respondent shall make restitution to the Estate of Pedro Castro in the amount of Two Hundred Seventy Three Thousand Nine Hundred Seventy Five Dollars [US\$273,975.00]. The Guam Bar Ethics Committee shall have and recover said amount of payment over to the said estate and this court shall issue the appropriate

LAW OFFICE OF
DAVID J. HIGHSMITH

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LAW OFFICE OF
DAVID J. HIGHSMITH

JUDGMENT

Writs of Execution and related documents as may be necessary to collect said money.

- 4. Respondent's one hundred twenty days of actual suspension from the practice of law shall be from January 14, 2000 to May 13, 2000.
- 5. Respondent is hereby given a public reprimand.
- 6. Respondent shall comply with Rule 18 of the Superior Court's Rules of Governing Disciplinary Proceedings.
- 7. Petitioner Guam Bar Committee shall have and recover its costs in this matter.


SO ORDERED:

Original Signed By:
HON. MICHAEL J BORDALLO

Dated: 2 MAR 2000

Honorable MICHAEL J. BORDALLO
Judge, Superior Court of Guam

Dated: 3/31/00

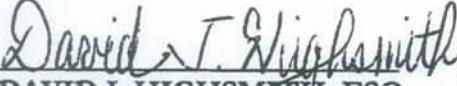

Honorable MIGUEL S. DEMAPAN
Judge Pro Tempore, Superior Court of Guam

Dated: 3/19/00


Honorable ALEXANDRO C. CASTRO
Judge Pro Tempore, Superior Court of Guam

SUBMITTED BY:

APPROVED AS TO FORM:


DAVID J. HIGHSMITH, ESQ.


LEONG G. MAQUERA, ESQ.

Dated: 3/1/00

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the

Dated: 03-02-2000

DJH/fdm



[A:\ETHICS\MAQUERA.JUD]

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IN THE SUPERIOR COURT
OF GUAM

JAN 4 1994

31

GUAM BAR ETHICS COMMITTEE,

SPECIAL PROCEEDINGS NO. SP0075-94

Petitioner,

vs.

LEON G. MAQUERA,

DECISION AND ORDER

Respondent.

INTRODUCTION

This matter came before the HONORABLE MICHAEL J. BORDALLO, the HONORABLE ALEXANDRO C. CASTRO¹, and the HONORABLE MIGUEL S. DEMAPAN on the 20th day of August 1999, on the Petitioner's motions to Alter or Amend Judgment and Revoke Probation. Additionally, the Panel heard Respondent's motions to Set Aside Judgment, Alter or Amend Judgment, and Dismiss. The Petitioner, Guam Bar Ethics Committee was represented by David J. Highsmith. The Respondent appeared *Pro Se*. At the close of oral arguments, the Panel took the matter under advisement.

BACKGROUND

The Guam Bar Ethics Committee on March 25, 1994 through April 7, 1994, respectively, found Attorney Leon G. Maquera ("Maquera") in violation of the Model Rules of Professional Conduct, Rules 1.5 and 1.8(a). Upon Petition to the Superior Court Panel, the Panel sanctioned Maquera for such violations. The violations took place on December 21, 1987, when Maquera drafted a deed that conveyed to Maquera title to property owned at the time by one of his clients, Pedro Castro. The property estimated by the Guam Bar Ethics Committee to have had a fair market value of two hundred forty-eight thousand, two hundred twenty dollars (\$248,220.00) at the time of

¹ Co-Chief Justices Castro and Demapan of the Supreme Court of the Commonwealth of the Northern Mariana Islands are sitting by designation of the Presiding Judge pursuant to 7 G.C.A. §6108.

2 DECISION AND ORDER

3 the conveyance, was intended as compensation to Maquera for his past legal services to Castro.

4 The Guam Bar Ethics Committee ("Committee") held hearings on this matter and issued
5 findings of Fact and Conclusions of Law. Maquera, according to the Committee, committed
6 misconduct by obtaining an unreasonably high fee for his services, which Maquera himself valued at
7 approximately forty-five thousand dollars (\$45,000.00) Furthermore, according to the Committee,
8 Maquera, by his own admission, failed to comply with the Model Rules' requirements of attorney-
9 client transactions.

10 The Committee recommended that Maquera be suspended from the practice of law on Guam
11 for a two year period, with all but thirty days suspended. Additionally, the Committee recommended
12 that Maquera be required to forfeit the money received from the sale of the property in excess of the
13 legal fees to which he was entitled. The Committee calculated the excess amount of two hundred
14 seventy-three thousand, nine hundred seventy-five dollars (\$273,975.00), and recommended that this
15 amount be paid in restitution to Castro. The Committee further recommended a public reprimand.
16 Following two separate evidentiary hearings, the Superior Court Panel confirmed the findings of the
17 Committee, and sanctioned Maquera according to the Committee's recommendations on July 2, 1997.
18 Additionally, the Panel required Maquera to take and pass the Multi-State Professional Responsibility
19 Exam during the two year suspension period.

20 **DISCUSSION**

21 Multiple motions have been filed by both the Petitioner and the Respondent. The Court will
22 address each motion separately.

23 (A) PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT

24 The Petitioner filed its Notice of Motion and Motion to Amend or Alter Judgment on August
25 1, 1996. The Petitioner requests that an additional line be added to the Court's judgment with respect
26 to Maquera's suspension from the practice of law. The judgment states:

27 Respondent shall be suspended from the practice of law for a period of two
28 years. All but thirty days of the two year suspension shall be suspended if
respondent performs all of the other terms and conditions imposed herein.

3 The Petitioner requests that the following be added, "If Respondent fails to perform said conditions
4 he shall serve the remainder of this suspension." The Respondent asserts that the addition is
5 redundant, and adds no additional meaning. The Respondent urges this Court to treat the language as
6 surplusage and deny the Motion to Amend. However, the Petitioner asserts that the additional
7 language is a mere clarification, and that the present language already contains the necessary language
8 to impose the entire two-year suspension if the Respondent fails to comply with the Court's order.
9 This Court agrees.

10 The language of the judgment states, "All but thirty days of the two year suspension shall be
11 suspended if respondent performs all of the other terms and conditions imposed herein." The
12 suspension of all but thirty days of the two year suspension is contingent upon the Respondent's
13 fulfillment of the remaining conditions of probation. The language requested by the Petitioner
14 reiterates and clarifies the position that should the Respondent fail to comply with the Court order, the
15 entire two year period would be imposed. It clarifies that the Respondent must immediately serve the
16 thirty day suspension, as well as follow all other conditions of probation. The Petitioner's Motion
17 to Alter or Amend Judgment is granted.

18 (B) RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT

19 The Respondent under GRCP Rule 59(e) presents two basic arguments in support of his
20 position that the Court should reverse its previous ruling. First, the Panel inappropriately found that
21 at the time of the misconduct an attorney-client relationship existed between Pedro Castro and the
22 Respondent. Second, the Panel erroneously applied value to the property in question. The
23 Respondent does not argue any mistake of law or fact by the panel. Instead, the Respondent seeks to
24 reargue his position on the merits.

25 Under Rule 59(e), reversal is an improper purpose for the motion. Courts which have
26 interpreted Rule 59(e) in factual settings have held that the rule does not allow the losing party to
27 repeat old arguments previously considered and rejected, or to raise new legal theories that should
28 have been raised earlier. National Metal Finishing Co., Inc. v. Barclays American/Commercial, Inc.,
899 F.2d 119 (1st Cir. 1990); See Federal Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th

3 Cir.1986) (stating this proposition). An appeal is not the proper forum for the use of Rule 59(e).

4 The motion to alter or amend judgment may not be used as vehicle for the losing party to rehash
5 arguments previously considered and rejected, nor a forum to present arguments that could have been
6 raised earlier. Moreover, "[a] party seeking reconsideration must show more than a disagreement
7 with the Court's decision, and 'recapitulation of the cases and arguments considered by the court
8 before rendering its original decision fails to carry the moving party's burden'" NL Industries, Inc. v.
9 Commercial Union Ins. Companies, 938 F.Supp. 248 (D.N.J. 1996).

10 The issue of whether an attorney-client relationship existed has already been addressed by the
11 Panel, and the Respondent's motion does not shed new light on the subject. The issue of value,
12 however, although now raised for the first time, is also an improper use of Rule 59. The Respondent
13 should have properly raised an objection when the Panel considered the value of the property, not
14 after the issuance of judgment. The Respondent's Motion to Alter or Amend Judgment is denied.

15 (C) RESPONDENT'S MOTION TO SET ASIDE JUDGMENT ISSUED ON JULY 2, 1997 and
16 RESPONDENT'S MOTION TO DISMISS²

17 The Respondent filed the first motion pursuant to Rule 60(b) alleging that the judgment was
18 fraudulently procured, and the second motion to dismiss alleging that the complete record of the
19 disciplinary proceeding were not provided to the Panel or Respondent. Respondent alleges that if the
20 Court did not have the evidence of valuation, the Panel unconstitutionally and erroneously assigned
21 a value to the property and could not fairly adduce the proper value of the property. On this basis, the
22 Respondent requests that the judgment be set aside and/or vacated. The Respondent further alleges
23 that the judgment on July 2, 1997 is void because Judge Maraman and Judge Cruz took action in the
24 matter following the Respondent's filing of a declaration objecting to their competency on April 24,
25 1997. The Panel will first address the issue of valuation. The Petitioner alleges that the valuation
26 by the Committee and the Panel's reliance upon it were proper. However, the Petitioner also alleges
27 that even if no evidence was considered, it was incumbent upon the Respondent to object during those

28 ² The Panel will consider the Respondent's two motions together because they essentially involve the same issue, i.e. the alleged lack of evidence on the valuation of the property.

3 proceedings, and his failure to do so constitutes a waiver.

4 The Panel considered evidence from both the Petitioner and the Respondent. The Respondent
5 alleged that the fair market value of the property at the time of the conveyance was twenty-five
6 thousand dollars (\$25,000.00). Conversely, the Petitioner alleged that the fair market value was two
7 hundred forty-eight thousand, two hundred twenty dollars (\$248,220.00). In adopting the position of
8 the Committee, the Panel stated, the Respondent "... advances no specific reason for adopting... the
9 ... valuation. Maquera gives no support for this valuation..." In Re Maquera, SP0075-94 (Super. Ct.
10 Guam May 7, 1996). Although the Panel does not delve into the basis for which the Petitioner derived
11 the value, Respondent is incorrect in that it erroneously or unconstitutionally applied value to the
12 property taken. This fact is evidenced by the Panel's comparison of the two positions. Furthermore,
13 the valuation by the Committee was determined by a request for evidence from both parties. If the
14 Respondent had any objections to the Committee's valuation, he had ample opportunity, at the
15 Committee determination, and the Panel's evidentiary hearing in which to raise an objection. Yet, the
16 Respondent, failed to do so. In effect, any objection to the valuation was waived.

17 As asserted by the Committee's Findings of Fact and Conclusions of Law, and confirmed by
18 the Panel, the Respondent sold the property for three hundred twenty thousand dollars (\$320,000.00)
19 on December 31, 1998; after subtracting the difference between the sale and value of various services
20 performed by Maquera, plus the sum expended on the right of redemption, the Panel ordered the
21 Respondent to pay restitution.

22 With respect to the recusal issue, Respondent urges this Panel to adopt the position that should
23 a judge not comply with the answer or consent requirements of Title 7 of the Guam Code Annotated,
24 §6107, the statute effects an automatic disqualification. The Respondent alleges that the Honorable
25 Judge Maraman, and Judge Cruz (currently Chief Justice Cruz) were disqualified from further ruling
26 on any issues pending in his case on July 2, 1997, when the Panel issued its Decision and Order on
27 the Respondent's Motion to Strike Petitioner's Second Opposition and Motion for Injunction. The
28 Motion was heard on April 22, 1997, and the Respondent filed his Motion to disqualify the judges on
April 24, 1997, after the Panel took the motion under advisement. The Respondent urges this Panel

2 to set aside the whole judgment.

3 The Respondent alleges that the judges were automatically disqualified because they failed
4 to admit or deny the disqualification within the ten day statutory period. This Panel does not favor
5 automatic disqualification, and adopts the position of the commentary following the competency
6 statute, "The procedure provided here allows an unbiased review of disqualification, but does not
7 permit automatic disqualification without the judge's having met specific grounds of disqualification."
8 Following the Respondent's declaration, no hearing was set, although the statute mandates the clerk
9 to set the objection for hearing within five days of notice. Although a disqualification hearing should
10 have been held prior to the Court's ruling on July 2, 1997, none was held. Because neither judge was
11 disqualified when the decision was rendered, and only voluntarily recused themselves later on
12 December 15, 1998, to vacate or set aside the judgment based on an alleged disqualification has no
13 merit. The Motions to Set Aside the Judgment and Dismiss are denied.

14 (D) PETITIONER'S MOTION TO REVOKE PROBATION

15 The Petitioner seeks the revocation of Respondent's probation on the grounds that he failed
16 to comply with the Court's judgment issued on July 18, 1996. Specifically, Petitioner alleges that
17 Respondent failed to comply with Court Order suspending the Respondent's practice of law for the
18 month of September 1996. Pursuant to Rule 18 of the Superior Court rules Governing Disciplinary
19 Proceedings, Petitioner requests that Respondent be found in contempt of court, and that probation be
20 revoked requiring Respondent to suspend the practice of law for two years, as per the Court's
21 judgment.

22 Respondent admits non-compliance. He asserts that both parties filed Motions to Alter or
23 Amend judgment calling into question the certainty and definiteness of the judgment. This argument
24 has no merit. The parties were given an opportunity to argue the case on its merits. The Panel
25 previously confirmed the decision of the Ethics committee. No stay on the judgment was sought or
26 granted under Guam Rules of Civil Procedure. The Respondent's motion, filed under GRCP Rule 59
27 to amend the judgment, does not stay the sanctions of the Court. Additionally, the Respondent was
28 free to file an appeal in the higher Court with regard to this matter, and likewise, could have requested

3 a stay pending the filing of that appeal. None of these actions were taken. Thus, the Respondent was
4 under an affirmative obligation to comply with the Court's order.

5 The Respondent, instead, relies on a failed attempt to convince the Ethics Committee to agree
6 to stipulate on suspension of punishment. The Respondent's attempts to contact the Petitioner in
7 regards to a stipulation does not affect the Court's judgment. The parties are free to agree to suspend
8 the sentence pending the Court's ruling on the motions to amend. However, absent the Court's
9 permission, the Respondent had an affirmative duty to comply with the Court's Order.

10 Therefore, the Panel will grant the Motion to Revoke Probation, and the Respondent is
11 required to comply with the conditions of probation set down by the Court on July 2, 1997. However,
12 as a sanction for his violation, the Panel will suspend the Respondent from the practice of law for
13 ninety days at this time, bringing the suspension period to one hundred twenty days. If the Respondent
14 does not comply with the conditions set down by the Court, and with the sanctions imposed by this
15 Panel, further sanctions will be imposed including suspending Respondent from the practice of law
16 for the remainder of the two year period. The suspension shall be administered by the Guam Bar
17 Ethics Committee in accordance with their duties under Rule 3 of the Rules of the Guam Bar Ethics
18 Committee Governing Discipline. The Petitioner's Motion to Revoke Probation is GRANTED.

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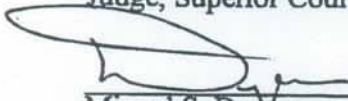
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3 **CONCLUSION**

4 Based upon the foregoing, this Panel GRANTS the Petitioner's Motion to Alter or Amend
5 Judgment, and DENIES the Respondent's Motion to Alter or Amend Judgment and Motion to Dismiss.
6 The Panel GRANTS the Petitioner's Motion to Revoke Probation. The Respondent is hereby
7 suspended from the practice of law for a period of 120 days to commence within thirty days of the date
8 of this Decision and Order.

9 SO ORDERED this 20 Day of Dec, 1999.

10 
11 Michael J. Bordallo
12 Judge, Superior Court of Guam

13 
14 Miguel S. Denapan
15 Judge Pro Tempore,
16 Superior Court of Guam

17 
18 Alexandro C. Castro
19 Judge Pro Tempore,
20 Superior Court of Guam

FILED

DAVID J. HIGHSMITH
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TEL: (671) 472-1031
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IN THE SUPERIOR COURT OF GUAM

TERRITORY OF GUAM

GUAM BAR ETHICS COMMITTEE,)	SPECIAL PROCEEDING CASE
)	NO. SPOO75-94
Petitioner,)	
)	
vs.)	JUDGMENT
)	
LEON G. MAQUERA,)	
)	
Respondent.)	

This matter having been considered by the court after a hearing on the merits, and the court having determined that Respondent has violated Rules 1.5 and 1.8 of the Model Rules of Professional Conduct, the court imposes the following discipline on Respondent Leon G. Maquera:

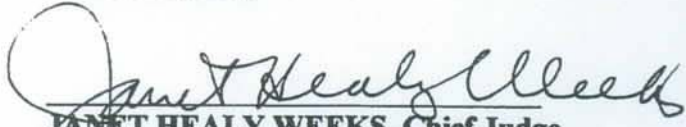
1. Respondent shall be suspended from the practice of law for a period of two years. All but thirty days of the two year suspension shall be suspended if Respondent performs all of the other terms and conditions imposed herein.
2. During the two year suspension, Respondent shall take and achieve a passing grade on the Multi-State Professional Responsibility Examination.
3. Respondent shall make restitution to the Estate of Pedro Castro in the amount of \$273,975.00. The Guam Bar Ethics Committee shall have and recover said amount for payment over to the said estate and this court shall issue the appropriate Writs of Execution and related documents

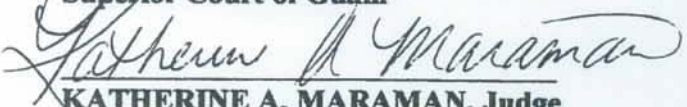
**In the Superior Court of Guam
Guam Bar Ethics Committee v.
Leon G. Maquera
Special Proceeding Cs. SP007-94
Judgment
Page 2**

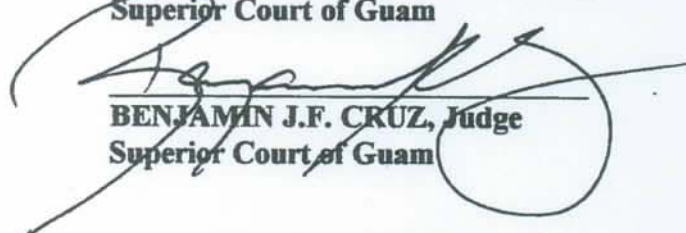
as may be necessary to collect said money.

4. Respondent's thirty days of actual suspension from the practice of law shall be September 1-30, 1996.
5. Respondent is hereby given a public reprimand.
6. Respondent shall comply with Rule 18 of the Superior Court's Rules Governing Disciplinary Proceedings.
7. Petitioner Guam Bar Ethics Committee shall have and recover its costs in this matter.

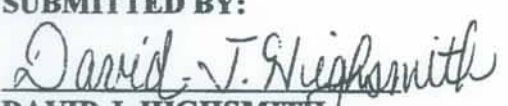
SO ORDERED:


JANET HEALY WEEKS, Chief Judge
Superior Court of Guam


KATHERINE A. MARAMAN, Judge
Superior Court of Guam


BENJAMIN J.F. CRUZ, Judge
Superior Court of Guam

SUBMITTED BY:

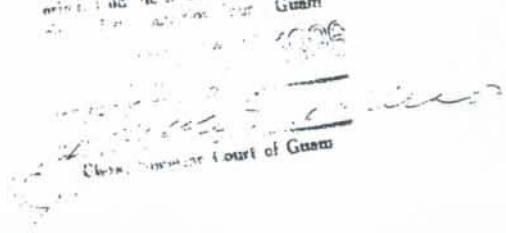

DAVID J. HIGHSMITH
PETITIONER'S ATTORNEY

APPROVED AS TO FORM:

LEON G. MAQUERA
RESPONDENT

wd9:12may96

I do hereby certify that the foregoing
is a full true and correct copy of the
minutes and do so in the office of the
Court of Guam


Clerk, Superior Court of Guam

1 IN THE SUPERIOR COURT OF GUAM
2 TERRITORY OF GUAM

3
4
5 GUAM BAR ETHICS COMMITTEE,)
6 Petitioner,)
7 vs.)
8 LEON G. MAQUERA,)
9 Respondent.)
10

SPECIAL PROCEEDING CASE
NO. SPO075-94

11
12 **DECISION AND ORDER**

13 This matter came before the Panel on Petition by the Guam Bar Ethics Committee
14 for disciplinary action against Respondent Maquera. The Court held evidentiary hearings
15 on 24 November 1995, and 8 April 1996. David J. Highsmith, Esq., appeared as Trial
16 Counsel for the Guam Bar Ethics Committee; Leon G. Maquera, Esq., appeared pro se.
17 At the close of oral argument, the Panel took the matter under advisement.

18 **BACKGROUND**

19 The Guam Bar Ethics Committee has found Attorney Leon G. Maquera to be in
20 violation of Rules 1.5, and 1.8(a) of the Model Rules of Professional Conduct, and
21 petitions this Panel to sanction Mr. Maquera for such violations. (Petition Filed 8 April
22 1994.) The alleged violation took place on 21 December 1987 when Maquera drafted a
23 deed that conveyed to Maquera title to property owned at the time by one of his clients,
24 Pedro Castro. The property, estimated by the Guam Bar Ethics Committee to have had
25 a fair market value of \$248,220.00 at the time of the conveyance, was intended as
26 compensation to Maquera for his past legal services to Castro. Aside from the deed itself,
27 the transaction between Maquera and Castro was oral.

28 ///

1 CHRONOLOGY OF EVENTS

2 The events surrounding Maquera's alleged misconduct occurred as follows:

3 On 6 August 1987, Edward Benavente, a creditor of Maquera's client Castro,
4 having obtained a judgment against Castro, purchased the property at issue at a public
5 auction. Benavente purchased the property for \$500.00, the amount of the judgment
6 awarded him against Castro. Castro retained a one year right of redemption, which could
7 be exercised by paying the amount of the judgment.

8 On 21 December 1987, Castro executed a quitclaim deed to the property to
9 Maquera as compensation for past legal services. This transaction was oral, aside from
10 the deed itself, and was not pursuant to any written fee agreement.

11 On 4 January 1988, Maquera removed a cloud on Castro's title to the property by
12 filing with the Department of Land Management an Affidavit of Cancellation of a
13 previously filed agreement to buy and sell the lot.

14 On 8 January 1988, Maquera exercised Castro's right of redemption by paying
15 \$525 in satisfaction of the judgment against Castro, and put title in his (Maquera's) name.

16 On 31 December 1988, Maquera sold the property to C.S. Chang and C.C. Chang
17 for \$320,000.

18 On 15 January 1994, the Guam Bar Ethics Committee concluded hearings
19 regarding Maquera's alleged misconduct.

20 On 25 and 26 January 1994, respectively, Mr. Maquera and Petitioner's Counsel
21 David Highsmith submitted proposed Findings of Fact and Conclusions of Law to the
22 Committee.

23 Between 25 March 1994 and 7 April 1994 the Committee's Findings of Fact and
24 Conclusions of Law were signed by all Committee members.

25 On 8 April 1994, the Guam Bar Ethics Committee filed a special proceedings
26 petition in the Superior Court requesting that the Court discipline Mr. Maquera in
27 accordance with its findings and conclusions.

28 ///

1 On 6 June 1994, Presiding Judge Lamorena appointed Judge Weeks, Judge
2 Siguenza, and Judge Cruz to sit on the panel for this case with Judge Weeks appointed
3 to serve as Chief Judge.

4 On 24 October 1994, Respondent Maquera's Motion to Produce Additional
5 Evidence was received by the Court, though not actually filed until 1 August 1995. In
6 this motion, Maquera sought permission to introduce evidence which he claims proves
7 that he is being unfairly singled out by the Guam Bar, and by Attorney Highsmith and also
8 that he has been unfairly denied access to the record in this case and in the case before
9 the Guam Bar Ethics Committee.

10 On 28 October 1994, Respondent Maquera filed a Declaration of Objection to
11 Qualification of Judge Siguenza. Maquera argued that Judge Siguenza should be
12 disqualified from sitting on the panel because Judge Siguenza "expressed an official
13 opinion concerning the merits of the matter in controversy" within Civil Case CV0924-90.

14 On 3 November 1994, Presiding Judge Lamorena issued an Amended Order
15 replacing Judge Siguenza with Judge Tydingco-Gatewood as a member of the Panel.

16 On 14 November 1994, Respondent Maquera filed a Declaration of Objection to
17 Qualification of Judge Gatewood. Maquera argued that Judge Gatewood's prior conduct
18 toward Maquera as opposing counsel and as Judge demonstrated a personal bias against
19 Maquera.

20 On 30 November 1994, Respondent Maquera filed a Motion to Dismiss the Petition.
21 Maquera argued that he had not been given the complete record of the Ethics Committee
22 proceedings as required by Rule 2 of the Guam Rules Governing Disciplinary Proceedings.
23 In addition, Maquera argued that the Committee's Findings of Fact and Conclusions of
24 Law are procedurally invalid.

25 On 1 August 1995, Judge Weeks, Acting Presiding Judge, issued an Amended
26 Order replacing Judge Tydingco-Gatewood with Judge Maraman as a member of the
27 Panel.

28 ///

1 On 27 November 1995, Respondent Maquera filed a document entitled
2 "Memorandum to Document Lies of Highsmith, Trial Counsel of Petitioner." In this
3 document, Maquera claimed to reveal 11 "lies" allegedly told by Mr. Highsmith. Maquera
4 also quoted to the Panel various passages of the Good News Bible with the apparent
5 intention of educating the Panel as to the origin of ethical principles.

6 On 16 February 1996, both Respondent Maquera and Petitioner's Counsel
7 Highsmith filed Trial Briefs summarizing their respective arguments on the merits.

8 On 5 March 1996, this Panel issued an order which denied Respondents Motion to
9 Dismiss, declared that Respondent's Memorandum Documenting Lies of Highsmith will
10 be disregarded by the Panel, and directed both counsel to "refrain from name-calling and
11 further unprofessional conduct." In addition, the order provided as follows: "The Motion
12 to Introduce Additional Evidence will not be ruled on at this time. Respondent may
13 present the exhibits which he attached to said motion at the hearing on the merits of this
14 case and Petitioner may state its specific objections at that time."
15

16 CONCLUSIONS OF THE GUAM BAR ETHICS COMMITTEE

17 The Guam Bar Ethics Committee held hearings on this matter and issued Findings
18 of Fact and Conclusions of Law. Maquera, according to the Committee, committed
19 misconduct by obtaining an unreasonably high fee for his services (Rule 1.5) which
20 services Maquera himself valued at approximately \$45,000.00. Furthermore, according
21 to the Committee, Maquera, by his own admission, failed to comply with the Model Rules'
22 requirements of attorney-client transactions. These requirements, contained in Rule
23 1.8(a), are as follows:

24 (a) A lawyer shall not enter into a business transaction with a client or
25 knowingly acquire an ownership, possessory, security or other pecuniary
interest adverse to a client unless:

26 1. the transaction and terms on which the lawyer acquires the interest
27 are fair and reasonable to the client and are fully disclosed and transmitted
28 in writing to the client in a manner which can reasonably be understood by
the client;

1 Castro's land as purported compensation for past legal services, that the value of his
2 services was approximately \$45,000.00, or that he sold the land he obtained from Castro
3 for \$320,000.00.

4 Despite Maquera's admissions, he does advance a number of defenses. Maquera's
5 primary arguments are that Mr. Castro was no longer his client at the time of the
6 transaction, and that the land Maquera received as payment from Castro did not
7 constitute an exorbitant fee. Maquera also advances the defenses of lack of undue
8 influence, laches, estoppel, and failure to do equity. These last four defenses are of
9 marginal relevance to the issue in this case, however, which is whether to discipline Mr.
10 Maquera for professional misconduct, and not whether Mr. Castro deserves compensation
11 for harm which he may have suffered.

12
13 **WHETHER CASTRO WAS A CLIENT AT THE TIME OF THE TRANSACTION**

14 Maquera argues that the attorney-client relationship between Maquera and Castro
15 ended on 14 December 1987 when the civil case, CV0525-83, in which Maquera had
16 been representing Castro, was settled. Because, according to Maquera, the transaction
17 at issue took place on 17 December 1987, three days after the case had settled, the
18 attorney-client relationship no longer existed.

19 Maquera cites several cases which he believes stand for the proposition that once
20 litigation on behalf of the client terminates, the attorney no longer represents the client
21 and the attorney-client relationship ceases. See e.g. Setzer v. Robinson, 57 Cal.2d 213
22 (1962)(attorney-client relationship had not yet begun at time parties entered into contract
23 for fees); Burleson v. Morse, 172 S.W.2d 361 (Tex. Ct. App. 1943)(contract for
24 attorney's fees signed after court proceedings completed held valid); Stiers v. Hall, 197
25 S.E. 450, (Va. 1938)(attorney-client relationship continued after litigation completed
26 because client believed attorney still representing her); Wilson v. Monette, 139 So. 264
27 (Ala. 1932)(agreement between attorney and client to higher fees after litigation
28 completed deemed an effective accord and satisfaction); McNeal v. Foreman, 117 Cal.

1 App. 155 (Cal. Ct. App. 1931); Ellis v. Poindexter, 137 S.E. 595, 596 (N.C.
2 1927)(contract for attorney's fees executed after services completed held valid); Korte
3 v. Brown, 255 P. 1103 (Okla. 1927)(conveyance of client's property to attorney as
4 payment held valid in light of client's admission in pleadings that attorney's services had
5 terminated); Olson v. Farnsworth, 150 N.W. 260 (Neb. 1914)(fee agreement after
6 litigation completed deemed a valid accord and satisfaction).

7 Maquera argues that he should not be disciplined for a transaction that occurred
8 after his services in CV0525-83 had concluded. Furthermore, Maquera believes that the
9 above noted cases show that he should not be disciplined for his transactions with Castro
10 unless it can be shown that he committed actionable fraud upon Castro.

11 Although the cases Maquera cites do contain language that supports his defense,
12 their relevance to these proceedings is unclear. All of the cases Maquera cites involve
13 disputes over the validity of fee agreements between lawyers and clients. The relevant
14 question in the instant case is not whether Maquera had entered into a valid contract with
15 Castro for payment of legal fees, but whether the Model Rules governing attorney-client
16 transactions should apply to Maquera's acquisition of Castro's property.

17 Admittedly, Maquera's citations do deal with the question of when an attorney-
18 client relationship exists. Even if it were assumed, however, that both disciplinary
19 proceedings and contract actions call for an identical analysis of the attorney-client
20 relationship, the cases Maquera cites are easily distinguishable from the instant matter.

21 The courts in most of the cases Maquera cites were presented with factual
22 circumstances strongly suggesting that at the time the disputed contracts were executed,
23 both parties believed there was no longer an attorney-client relationship. Wilson v.
24 Monette and Olson v. Farnsworth both involved disputes over the amount due an attorney
25 for his services. The facts in both cases lead the courts to conclude that a valid accord
26 and satisfaction had been executed.

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1 In Olson, after the client had prevailed in litigation, a dispute over the terms of the
2 attorney's fee agreement arose. The attorney tendered to the client half of the judgment
3 the client had been awarded, and the client gave the attorney a receipt acknowledging the
4 amount as the "full proceeds" to which he was entitled. Olson, 150 N.E. at 261-62.

5 In Wilson, under facts similar to Olson, the client accepted payment of a portion
6 of an awarded amount from his attorney in settlement of a fee dispute with the attorney.
7 The client accepted the payment against the advice of independent legal counsel. Wilson,
8 139 So. at 266.

9 In Korte v. Brown, the client actually admitted in his complaint that his attorney's
10 services had been completed, and that there was "nothing more to be done." Korte, 255
11 P. at 1103. In upholding the validity of a conveyance from the client to his attorney as
12 payment, the court held that "[but for the pleading above quoted on the part of the
13 plaintiff, we would be reluctant to conclude that the relation of attorney and client did not
14 exist at the time of the transaction in question." Id. at 1104.

15 In Burleson v. Morse, McNeal v. Foreman, and Ellis v. Poindexter, the courts upheld
16 the validity of contracts for attorney's fees executed after services had been rendered.
17 In each case, however, the question of whether the attorney-client relationship existed
18 at the time of the transaction was decided by a jury after examination of all of the facts.

19 The final two cases Maquera cites on the attorney-client relationship issue are
20 Setzer v. Robinson, and Stiers v. Hall. Neither case is particularly supportive of Maquera's
21 argument. In Setzer the question was whether the attorney-client relationship had begun
22 by the time the contingent fee agreement was negotiated. The court held that the parties
23 dealt at arm's length until the contract for fees was made. Setzer, 57 Cal.2d at 217. In
24 Stiers, the court held that the attorney-client relationship existed beyond the completion
25 of the attorney's services because the client still believed the attorney was representing
26 her. In so holding the court made the following finding:

27 Mrs. Hall said that she was under the impression that he was her brother's
28 counsel, but he said nothing to lead her to that conclusion. She merely took
it for granted because Stiers had represented him on other occasions. We

1 think that she and Stiers occupied the position of client and counsel. She
2 went to see him because he was a lawyer, and the work which he was
asked to do fell within the field of his profession.

3 Stiers, 197 S.E. at 453.

4 It is clear from the Maquera's citations that the question of whether an attorney-
5 client relationship exists depends upon the facts of each case. In addition, page 5 of the
6 Preamble to the Guam Rules of Professional Conduct, which adopts the Model Rules,
7 states as follows:

8 Furthermore, for determining a lawyer's authority and responsibility,
9 principles of substantive law external to these Rules determine whether a
10 client-lawyer relationship exists. Most of the duties flowing from a client-
11 lawyer relationship attach only after the client has requested the lawyer to
12 render legal services and the lawyer has agreed to do so. But there are
some duties, such as that of confidentiality under Rule 1.6, that may attach
when the lawyer agrees to consider whether a client-lawyer relationship shall
be established. Whether a client-lawyer relationship exists for any specific
purpose can depend upon the circumstances and may be a question of fact.

13 (emphasis added). In the instant case, the only evidence that the attorney-client
14 relationship had ended prior to the conveyance in question is that Maquera obtained a
15 settlement in CV0525-83 less than one week before the conveyance.

16 Maquera had handled various matters on behalf of his client Castro for a period of
17 five years. The evidence presented at the hearing on this matter indicates that after the
18 settlement of CV0525-83, Castro believed that Maquera was still his attorney. Castro
19 made no written admissions to the effect that Maquera was no longer representing him,
20 and he made no effort to seek advice from independent counsel. Significantly, Castro
21 might have taken such steps had his attorney complied with Model Rule 1.8(a).

22 Unlike many of the cases Maquera cites, there was no legal dispute between
23 Maquera and his client Castro prior to the conveyance. Had there been such a dispute
24 following the settlement, Castro might have been put on notice that Maquera was no
25 longer protecting his interests.

26 Additionally, in his argument to the Panel, Maquera denied that his relationship with
27 his client Castro extended beyond his handling of certain specific legal matters. (Tape 96-
28 0553 at 214.) As pointed out by Trial Counsel, this characterization of his relationship

1 with Castro is inconsistent with Maquera's testimony to the Guam Bar Ethics Committee
2 in which Maquera described Castro as a very close friend. (Tape 96-0554 at 473.) If
3 Maquera and Castro were in fact very close friends, it is understandable that Castro would
4 think of Maquera as his attorney without regard to whether Maquera had obtained a
5 settlement in his most recent case.

6 Finally, Maquera admits that, at the time he exercised Castro's right of redemption
7 and obtained title to the property, he still held some of Castro's funds in trust. In
8 addition, Maquera admits that he received these funds as Castro's attorney after the 14
9 December 1987 settlement of CV0525-83. (Tape 96-0553 at 3480.)

10 Based upon the above discussion the Panel finds that, under the facts of this case,
11 an attorney-client relationship existed at the time Maquera accepted the deed from Castro.

12
13 WHETHER MAQUERA'S FEE WAS EXORBITANT

14 Maquera claims that the value of the property should not be set at \$320,000.00
15 Maquera's sale price, but should be determined as of the time of the transaction.
16 According to Maquera, the property should be valued at \$5.00 per square meter, a total
17 value of \$25,000.00. At the time of the transaction, according to Maquera, Castro
18 himself valued adjacent property belonging to him at \$5.00 per square meter. Even
19 assuming that Castro's prior valuation of adjacent property is sufficient to establish his
20 prior appraisal of the property at issue, Maquera advances no specific reason for adopting
21 the \$5.00 per square meter valuation. Maquera gives no support for this valuation other
22 than the statement that Castro's valuation of his own property is admissible according to
23 29 AmJur 2d EVIDENCE, § 397, 399.

24 The Guam Bar Ethics Committee found the fair market value of the property on 21
25 December 1987 to be \$248,220.00, or \$45.00 per square meter. The Panel adopts the
26 valuation of the Guam Bar Ethics Committee as a realistic appraisal of the property
27 Maquera received.

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29 hereby imposed in all particulars. Furthermore, as a result of the admission made at the
27 8 April 1996 hearing on this matter, the requirement that Mr. Maquera take and
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1 Given the value of Maquera's services, which he calculates to be \$45,000.00, the
2 Panel finds the property Maquera received as payment from his client, valued at
3 \$248,220.00, to constitute an exorbitant fee.

4
5 **CONCLUSION**

6 Based upon the foregoing discussion, the Panel confirms the findings and
7 conclusions of the Guam Bar Ethics Committee subject to the following qualification:

8 The Panel is very disturbed by Mr. Maquera's admission when queried whether he
9 was aware of the Model Rules' requirements with regard to transactions like the one for
10 which he appears. His response to the Panel was that he was aware of the requirements
11 "in a very general sort of way." (Tape 96-0554 at 30.)

12 That is not the standard of awareness acceptable for practice of law on Guam.
13 Therefore, this Panel requires that during the two year period specified by the Guam Bar
14 Ethics Committee Mr. Maquera take and pass the Multi-State Professional Responsibility
15 Examination ("M.P.R.E.") administered by the Board of Law Examiners.

16 Such action on the part of this Panel is authorized by 7 G.C.A. § 9201, and by
17 Rules 3 and 12 of the Superior Court of Guam Rules for the Discipline of Attorneys. Rule
18 3(f) provides that "[t]he Superior Court is not restricted to the findings of the Ethics
19 Committee and may render its judgment based upon the record and any additional findings
20 it may make." In addition, with regard to the types of discipline the Panel is authorized
21 to impose, Rule 12(f) provides that violations of the Model Rules shall be grounds for:

22 requirement by the Superior Court that an attorney successfully pass the
23 multi-state professional responsibility examination given by the board of law
24 examiners the next time it is given or be suspended for a period set by the
Superior Court.

25 Superior Court of Guam Rules for the Discipline of Attorneys, Rules 3(f), 12(f).

26 In summary, the sanctions recommended by the Guam Bar Ethics Committee are
27 hereby imposed in all particulars. Furthermore, as a result of the admission made at the
28 8 April 1996 hearing on this matter, the requirement that Mr. Maquera take and


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pass the M.P.R.E. during the specified two year period is added.

SO ORDERED this 7th day of May, 1996.

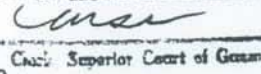

JANET HEALY WEEKS, Chief Judge
Superior Court of Guam


BENJAMIN J.F. CRUZ, Judge
Superior Court of Guam


KATHERINE A. MARAMAN, Judge
Superior Court of Guam

I hereby certify that the foregoing
is a true and correct copy of the
original as filed in the office of the
Clerk of the Superior Court of Guam.

MAY 27 1996


Clerk, Superior Court of Guam

