

**THE SUPREME COURT
OF THE
FEDERATED STATES OF MICRONESIA**

**WRITTEN EXAMINATION FOR ADMISSION
TO PRACTICE BEFORE THE SUPREME COURT
OF THE FEDERATED STATES OF MICRONESIA**

AUGUST 4, 2011

ADMINISTERED IN POHNPEI AND KOSRAE

**SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA**

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO COMPLETE THIS TEST. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE STARTING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ANSWERING QUESTIONS NOT ACTUALLY ASKED WILL BE REGARDED AS INDICATING INADEQUATE UNDERSTANDING AND MAY RESULT IN LOSS OF POINTS. PLEASE TRY TO WRITE OR PRINT YOUR ANSWER LEGIBLY. AN ILLEGIBLE ANSWER MAY RESULT IN A LOSS OF POINTS. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I.	3
II.	7
III.	10
IV.	8
V.	5
VI.	2
VII.	12
VIII.	6
IX.	15
X.	7
XI.	10
XII.	15
TOTAL	<u>100</u>

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE EVIDENCE QUESTIONS ARE I, II, AND III, AND THE ETHICS QUESTIONS ARE IV AND VI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (3 points)

Panda sues Draco, alleging that Draco, in order to avoid oncoming traffic, ran her off the road while trying to pass her car. Panda's car was damaged when it struck a tree about eight feet from the road. Fifteen minutes after the accident, Panda arrived by ambulance at the state hospital. The doctor, while putting four stitches above Panda's left eye asked her what happened. Panda, weeping and speaking with some difficulty, replied, "Some crazy person tried to pass me without enough room and ran me off the road to avoid oncoming cars. I ran into a tree."

Draco claims that he had enough room and time to pass Panda's car, but that Panda tried to force him into oncoming traffic and that he had no choice but to cut back into the lane in front of her.

At trial, Panda calls the emergency room doctor to testify about what she said while being stitched. Draco objects.

Should the court admit the doctor's testimony? Explain

Evidence

II. (7 points)

A woman was stopped at an intersection in downtown Kolonia when a blue Honda struck her car from behind. Will, a pedestrian, saw the accident and saw the Honda fleeing the scene and was able to read its license plate number. He repeated the number to himself until he could write it down on a napkin. When the police arrived to investigate, he reported the license number to Officer Semes. Will watched as Officer Semes wrote the license number down into the officer's police notebook. Will confirmed that Officer Semes correctly wrote the same number down that Will had seen and written on the napkin. Will threw the napkin away.

Because of the large number of recent burglaries in the area, a nearby business had recently installed a security camera which had captured pictures of the accident and recorded it on the attached computer's hard drive. The images showed a blue Honda with the same license plate number involved in the accident and leaving the scene. The images also showed the Honda being driven by a man who appeared to look like Doug.

The license number was traced to Dan's blue Honda, which had signs of recent repairs. Doug was charged in state court with leaving the scene of an accident. Assume that the relevant rules of evidence in the state court are identical to those in the FSM Supreme Court.

At trial, the prosecutor called Will to testify about the fleeing vehicle's license plate number. Will had no present memory about the license number. Will testified about how he had seen the number and reported it to Officer Semes. Will said that since Officer Semes had written the number in his police notebook, Will had thrown the napkin away.

The prosecutor called Officer Semes to testify about the license plate number written in his police notebook. Doug objected, arguing that the testimony was hearsay and violated the "best evidence" rule. The prosecutor argued that the evidence was allowed as past recollection recorded. The judge allowed Officer Semes to read the license plate number in his police notebook.

The prosecutor called the nearby business's manager, who testified about how a CD had been made from the store's computer hard drive. The manager explained that the system was tamper-proof; that it downloaded digital images from the camera onto the computer's hard drive; that the manager had viewed what had been burned onto the CD, and that it showed the same event as the computer's hard drive. The prosecutor sought to introduce the CD as evidence and play it for the judge. Doug objected, arguing that it violated the "best evidence" rule and that the prosecutor had to bring in the actual computer hard drive. The judge agreed and excluded the CD.

Explain whether the trial court was correct in
(A) allowing Officer Semes to read the license plate number from his notebook and
(B) in excluding the CD.

Evidence

III. (10 points)

On Friday, February 25, 2011, Faraday exited the third-floor office of the Katau Insurance Agency. The Agency owned the building. Access to the third-floor office was via an exterior wooden stairway, built in 1989. It had been raining hard and windy earlier in the day and the stairway was wet and there were wet leaves on it that had been blown off nearby trees.

Faraday proceeded down the stairway four or five steps, then the next step collapsed and Faraday fell the remaining length of the stairs. He suffered several broken ribs, leg, back, and shoulder injuries. An employee of the Agency, Seldom Siemens, saw the accident and exclaimed, "Oh no. Not again!"

An ambulance was called to the scene. After its arrival, Faraday overheard Watt, one of the ambulance attendants, telling various agency employees that he had been telling them for three years to do something about the stairway.

There were pretrial depositions of several of the Agency employees, including Ohm, who was in charge of maintenance work. Ohm testified that on the day after the accident he repaired the broken stairway. In his opinion, based on his observation at the time, the wood had weakened as the result of weathering over the years. Unfortunately, Ohm has had some recent health problems and has been medivaced to the Philippines and may not be able to attend the trial.

Identify and analyze the evidentiary issues. Explain how the court is likely to rule on these issues.

IV.
(8 points)

Attorney Alcibides was contacted by Pericles, a person who had taken some paralegal training courses while in the United States and who, if he had stayed there might have been certified as a paralegal. Pericles was seeking employment. After discussion Alcibides and Pericles establish the following arrangement. Alcibides rents office space on Chuuk, furnishes the space, and pays the utilities. The sign on the door reads "Divorce Services Legal Clinic." Alcibides runs ads on local cable TV reading "Divorce — why pay more? — \$125 — call 331-1212." Alcibides maintains his own practice on Pohnpei. Pericles runs the Chuuk clinic, establishing its hours and hiring a part-time secretary.

People who call are given an appointment with Pericles. Pericles interviews the clients and prepares the pleading for divorce from forms on the word processor. Twice a week Pericles e-mails to Alcibides his interview notes and the pleadings he has prepared and given to the clients. The pleadings are prepared showing the client as appearing pro se and do not bear the signature of either Alcibides or Pericles. The clients are given an instruction sheet instructing them how to file the pleadings and how to ask for default hearings and judgments.

Alcibides and Pericles enter into an employment agreement which shows that Pericles is Alcibides's employee and is obligated to do as he instructs. Pericles's wage is a commission of one half of all fees generated by the clinic. When people call seeking legal work other than a simple default divorce, they are given an appointment with Alcibides during one of his monthly visits to Chuuk. Alcibides bills them at his regular \$110 hourly rate.

Discuss all issues pertaining to the FSM Model Rules of Professional Responsibility raised by the foregoing facts.

V.
(5 points)

Daniel was driving a Petrocorp gasoline truck down the road at night when Paul, a minivan driver struck the rear of Daniel's truck causing a collision and an explosion. Paul was badly burned and Daniel suffered a total memory loss from the accident. Based on the physical evidence at the accident scene, the accident's cause appeared to be excessive speed on Paul's part. The only witness was Wendy, who was driving a Rav4 behind Paul and Daniel. She stopped after the accident and called the police on her cell phone.

Alex, a claims investigator for Petrocorp's insurance company, obtained a written statement from Wendy two days after the accident. In her statement, Wendy said that Daniel caused the accident by sliding over into the passing lane where Paul was trying to pass and that Paul was too close to avoid the accident, although she couldn't estimate how fast Paul was driving. Alex wrote two comments on Wendy's statement: 1) Wendy is a very credible witness; and 2) her statement is very harmful to Daniel's potential defense. Shortly after making her statement, Wendy left the island and cannot be found. Alex immediately forwarded Wendy's statement to Lawyer, Petrocorp's attorney on retainer.

Paul sued Daniel and Petrocorp in the FSM Supreme Court for personal injury damages alleging that Daniel negligently drove the truck. Defendants filed an answer specifically denying each of the Complaint's allegations of wrongful conduct. During discovery, Paul demanded production of Wendy's statement. Defendants claimed that the statement was privileged or otherwise protected from discovery. Paul moved for an order compelling production of the statement. Defendants filed a written response opposing production solely on the ground that the statement was not reliable because it was not under oath. The written response was prepared and signed by Lawyer. Lawyer developed the unreliability argument without conducting any research or citing any legal authority.

Should the trial judge grant Paul's motion to compel production of Wendy's statement? Explain.

VI.
(2 points)

This question is based on the facts in the previous question.

What sanctions, if any, should the trial judge impose on Lawyer for making this response?

General

VII. (12 points)

Carl was a construction foreman for Axco. During 2009, Axco's president, Pat, received several complaints from outside contractors working on sites where Carl worked with his crew. The contractors complained that Carl was often unreasonable and sometimes acted in a threatening and abusive manner to them. Pat also received complaints from other Axco employees, who told Pat that Carl was combative and that they would quit if they had to continue working with Carl.

Pat had also had a difficult time working with Carl. While Pat hadn't seen Carl acting in a threatening manner, he had noticed that Carl's moods and behavior were unpredictable. Pat decided that Carl needed to go. But Pat was worried how Carl might react when told that he no longer had a job. Pat had heard stories about disgruntled employees committing violent acts against co-workers. Given reports of Carl's conduct, Pat decided it would be wise to ask that state police officers be present — as a "standby" — when giving Carl the employment termination notice.

Pat called the state police and explained that Axco needed police assistance because Axco was "discharging Carl from employment and Carl was a violent person who was likely to act in a manner that would cause damage to persons or property." Pat asked that the police arrive at Axco's shop before 8:00 a.m. on October 1, 2009, the time Carl usually arrived for work.

When Carl arrived for work on October 1, 2009, he noticed a police vehicle in the parking lot. As Carl entered the shop, he noticed two police officers standing near the door. Several Axco employees were working in the shop. Pat asked Carl to come to his office. When Carl entered, Pat shut the door and handed Carl his termination letter. After Carl read the letter, he went to his office to gather a few personal items. Comfortable that Carl was acting in a rational manner, Pat asked the police officers to leave. A few minutes later, Carl left taking a few of his things but explaining that he would return later in the week to collect his personal files and the rest of his personal belongings. As soon as Carl left, Pat called a meeting of Axco employees and told them Carl had been fired. Also Pat decided he didn't want Carl returning to the Axco shop so he went to Carl's office to pack Carl's personal property. Pat found a fifty-dollar bill in Carl's desk. Assuming that this was from Axco's petty cash drawer, Pat returned the bill to the cash drawer. Pat also found Carl's medical evaluation from a physical exam Axco paid for to comply with the requirements of Axco's insurer. Pat put this in Axco's files, Pat packed everything else in boxes which were delivered to Carl's house the next day.

For over a year, Carl tried to get a new construction job. Several employers told Carl that they would not hire him because they had heard that he had a temper and was a difficult employee. With little else to do, Carl decided to file suit.

A. (6 points) Carl alleges that Pat defamed him (a) when Pat told the police that Carl was a violent person who was likely to act in a manner that would cause damages to persons or property and (b) when Pat announced to Axco employees that Carl had been fired. Discuss the merits of Carl's claims.

B. (6 points) Carl also alleges that Pat wrongfully invaded his privacy by going through his personal files and belongings and that Axco wrongfully converted Carl's property when it failed to return his \$50 and his medical evaluation. Discuss the merits of these claims.

General

VIII. (6 points)

In each of the following cases, the defendants removed the case from the state court in which it was filed to the FSM Supreme Court trial division.

In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to state court in which it was filed on the ground that it had been improvidently removed — that is, that the case should not have been removed in the first place. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case originally filed in the State Court of Yap in which the plaintiff local credit union made a loan to a Yapese citizen and secured the loan with a mortgage on his tourist dive boat and is now seeking to foreclose on the ship mortgage because the loan has not been repaid.

B. (3 points) A case originally filed in the Pohnpei Supreme Court in which a Pohnpei business wholly owned by a Philippine citizen sued a Guam business, wholly owned by a U.S. citizen, alleging breach of contract.

IX.
(15 points)

A confidential informant, who, in the past, had given the police department accurate information, told an officer that Betty was a meth dealer and that the informant had seen packets of crystal meth in Betty's apartment earlier that day. Immediately after receiving the information, three officers from the detective squad were sent to Betty's apartment. The officers, who did not have a warrant, intended to question Betty, hoping that she would make an inculpatory statement that would justify an arrest.

When the officers arrived at Betty's second-floor apartment, they found the front door slightly ajar. They knocked on the door and it swung open. They then walked into the apartment and saw an open box on the front hall table that contained rings and other jewelry that matched the description of jewelry stolen in a recent burglary.

As the officers left the apartment, they recognized Betty in the hallway. The officers surrounded her, showing their badges and guns, and asked her to identify herself. When Betty refused and started to go, one of the officers ordered her to stop and to put up her hands so that she could be frisked. The officer conducting the frisk then noticed a small hard object in Betty's pocket. The officer removed the object and discovered it to be a hard plastic box containing several small packets of a crystalline substance that later tested to be methamphetamine.

Betty was charged with receiving stolen property and possession of a controlled substance. Betty's attorney filed a motion to suppress the jewelry and the meth.

How should the trial judge rule on the motion to suppress? Explain.

General

X.
(7 points)

Discuss the constitutionality of the following under the FSM Constitution:

A. (4 points) A state statute imposing a tax of 10% of all fees collected by businesses from their customers for the customers' use of the businesses' wireless internet connection and a flat tax of \$400 per year on businesses who provide their patrons free Internet access.

B. (3 points) A national statute imposing a tax of 00.25% of the sale price on any sale of land and imposing the tax on the seller and requiring the seller to pay it out of the sale proceeds.

General

XI. (10 points)

The State of Pohnpei acquired a longline fishing vessel named the *Pride of Lohd*. The state then hired Captain Kelly, a New York citizen, to run the vessel and train Pohnpeian citizens how to operate and maintain a commercial longline fishing vessel. He signed a two-year contract to that effect.

After ten months of successful fishing voyages the state, for unknown reasons, decided that it did not want to fund the further operation of the *Pride of Lohd*. It was left tied up at the dock. The state informed Captain Kelly that his services would not be needed any longer.

Assume that the State of Pohnpei has an administrative procedures act that generally requires that administrative remedies be exhausted before a claimant against the state can sue in court.

Captain Kelly asked the state to compensate him for the state's breach of his employment contract. He sent a letter to the state officials that he had dealt with when he was hired. He did not receive an answer. When he met them personally they said that they would do something. Nothing happened.

A. (4 points) Three months later Captain Kelly filed suit against the state in the FSM Supreme Court. The state responded by a motion to dismiss for failure to state a claim upon which relief can be granted because Captain Kelly had not exhausted his administrative remedies.

Comment on the motion's possible outcome and the reasoning behind it.

B. (6 points) Assume that the case proceeds in the FSM Supreme Court. The state files an answer denying that there was a contract between Captain Kelly and the state. It alleged that Captain Kelly's contract was not with the state, but was instead with Rock Enterprises, Inc., a corporation with a Pohnpei foreign investment permit and which is wholly owned by three U.S. citizens resident on Guam. The state in turn had a contract with Rock Enterprises, Inc. to hire and provide qualified personnel to train commercial fishermen. Copies of both contracts were attached to the answer as Defense Exhibits A and B. Shortly thereafter the state moved for judgment on the pleadings.

Assume that Captain Kelly acknowledges that the contracts are genuine. You are Captain Kelly's attorney. What possible steps might you take? How might the court rule and why? What is the likely result if the only step you take is to oppose the state's motion?

XII.
(15 points)

In March, 2010, April, a Yapese citizen and resident, was in her last year of law school in Oregon, applied for employment at Rains & Shines, a law firm on Pohnpei. Claude Rains, the firm's senior partner, wrote to April: "Subject to your passing the bar exam, we offer you employment starting October 1, 2010, at \$2500 a month. You must reply within a week." April didn't reply.

Ten days later, Rains called April on the telephone and stated, "We really want you to join us. We increase our offer to \$3,000 a month. We agree to keep you on staff for at least two years, after which we'll consider whether to make you a partner." The next day, April wrote Rains, "I accept your offer."

In May, April graduated law school. In June, she quit her job in the county law library and moved to Pohnpei. She signed a two-year lease for an apartment in Kolonia Town at \$800 a month. She paid the FSM Supreme Court \$50 for copies of past bar exams and \$900 for copies of all the FSM Reporters and Digest. On August 5, 2010, April took the FSM bar.

On August 25, 2010, Rains called April and told her: "We had intended for you to work on our fisheries law cases. Unfortunately, our two biggest fishing company clients have ceased operation in the FSM. We no longer need your services. Best of luck in finding other employment."

On September 1, 2010, April received news that she had passed the FSM bar. She applied to all of the other private law firms on Pohnpei but did not receive any offers. April was so discouraged that after October 1, 2010, she stopped looking for any work for three months. In January, 2011, April got a job in a Pohnpei hotel as a waitress in its restaurant. Her pay is \$1.50 an hour plus tips.

One day, she is serving you and you two get to talking about her situation. Advise April about her rights, if any, against Rains & Shines for breach of contract and the law firm's possible defenses. Include in your analysis the existence of a Pohnpei statute of frauds requiring a writing for contracts that cannot be performed within one year.