

**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 2, 2012

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

**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, READ 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.	4
II.	6
III.	13
IV.	7
V.	15
VI.	9
VII.	15
VIII.	10
IX.	12
X.	<u>9</u>
TOTAL	100

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

GOOD LUCK.

Ethics

I. (4 points)

Attorney Zelda has practiced law in the FSM ever since she was admitted by examination in 2001 to practice before the FSM Supreme Court. She came here from California, where she had been admitted to the bar in 1997. In 2000, Zelda voluntarily changed her California bar status from active to inactive membership.

In 2005, she stopped paying her California inactive bar membership dues and was administratively suspended from the California bar. This fact only recently came to light when someone looking something else up on the California bar website decided on a whim to look her up and noticed that she was listed as administratively suspended. FSM Disciplinary charges were then filed.

Zelda has requested a hearing pursuant to FSM Disciplinary Rule 11(c) at which she will to assert her claim that the imposition of the identical discipline by the Supreme Court would be unwarranted, and you have been appointed Disciplinary Counsel for the hearing. What arguments and recommendations would you make concerning Zelda?

Ethics

II. (6 points)

Lex, a member of the FSM bar, practicing by himself, ran an ad in the *Kaslelie Press* that, among other things, said, "No charge for initial consultation." In response to the advertisement, Alexis Smith made an appointment. Lex met with Smith for three hours to discuss divorce. During her consultation, Smith described how abusive her husband has been to her. Lex charged her \$250, his normal rate of \$100 an hour for two and one half hours. Lex gave her a detailed divorce questionnaire to complete and return to him so he could prepare a divorce complaint.

The next day, in response to the same advertisement, Lex met with Luke Adams for an hour. Adams described how his wife had been unfaithful to him. Lex gave Adams the same questionnaire and received a \$5,000 "flat fee" which he deposited in his operations account. Lex based the amount of the flat fee on the fact that the wife's actions were so egregious.

Two days later, both completed questionnaires arrived in Lex's mail. The questionnaires reveal that Alexis Smith and Luke Adams are married to each other.

Discuss all issues raised by the FSM Model Rules of Professional Conduct.

Evidence

III.

(13 points)

The Sunshine Bakery and General Store was recently burglarized. When police investigated, they discovered that the floor of the store was littered with Wally's Wintergreen chewing gum wrappers and that a case of beer was missing. The burglar left behind a note in a very distinctive handwriting that said, "I admit that I did this, but I only did this because I needed beer." After conducting a thorough investigation, the police arrested Druid, the leader of a small religious group that awaits the coming of aliens in flying saucers and strictly forbids the consumption of alcohol. Druid plans to testify that he was on an outer island at the time of the burglary.

The prosecutor plans to offer four pieces of evidence against Druid.

A. (3 points) First, the prosecutor plans to offer the testimony of Josepha, Druid's housekeeper of three years, who will testify that, whenever she cleans Druid's home, the floors of his home are routinely covered in Wally's Wintergreen chewing gum wrappers.

B. (3 points) Second, the prosecutor plans to offer the testimony of Carolyn, Druid's administrative assistant at the Church of the Flying Saucers, who will identify the distinctive handwriting in the note left in the store as being Druid's.

C. (4 points) Third, the prosecutor plans to admit only the first part of the note — "I admit that I did this."

D. (3 points) Lastly, the prosecutor plans to offer the testimony of Dr. Hubert Hubris, a respected theologian, who will testify that Druid's testimony is not credible because of his unusual doctrinal beliefs about the divinity of flying saucers.

You are Druid's defense attorney. Using the FSM Rules of Evidence, assess the admissibility of the evidence against Druid. Explain your answer.

Evidence

IV.

(7 points)

Pat was shopping in the state center. As she entered the Acme Fabric Shop, she tripped over the molding on the door's threshold, fell, and fractured her hip.

Dan, the owner and proprietor of the Acme Fabric Shop, ran to help her as she lay on the store's floor. He told one of his employees to call for an ambulance. Pat protested that she didn't have any insurance and wasn't sure if she could afford an ambulance. Dan assured Pat not to "worry about it." He said that he would "take care of the bills."

Six months later, Pat filed suit against the Acme Fabric Shop in the FSM Supreme Court, seeking \$50,000 for damages related to her injuries. Dan initially offered to settle the case, but withdrew his offer when Pat refused to settle for less than \$20,000. Dan balked at that amount of money, stating that he merely leased the property, did not own it, and was not responsible for the condition of the door molding.

Through the course of discovery, Pat's attorney learned that Acme Fabric Shop was covered by a \$100,000 liability policy. He also learned that, after Pat was injured, Dan replaced the door molding with a narrower type that was not as likely to pose a trip hazard.

The Acme Fabric Shop has filed a motion to dismiss the case, claiming that there was no evidence showing that Acme Fabric Shop was responsible for the molding or was negligent. In response, Pat's attorney points to Dan's offer to "take care of the bills," his offer to settle the case, the insurance policy, and Dan's replacement of the door molding after Pat's fall.

You are the judge deciding the motion. Discuss the propriety of the evidence proffered by the plaintiff in opposing the motion to dismiss.

V.
(15 points)

Two best friends, Parker and Daisy, were leaving the movie theater after seeing the latest vampire movie. The two teenagers were standing in the lobby when they began arguing over the movie's ending. Frustrated by the conversation, Daisy took the lid off her drink and threw it in Parker's face. As she stomped off, Daisy threw her cup and the remaining ice on the floor near the lid of her drink and threw it in Parker's face. As she stomped off, Daisy threw her cup and the remaining ice on the floor near the movie theater's entrance. Johnny, a movie theater employee, witnessed the whole scene and was laughing so hard he could barely stand up. He finally managed to grab a wet floor sign and positioned it next to where Parker had been standing. Unfortunately, he got sidetracked when he was explaining the drama to his buddy and forgot to pick up Daisy's cup or put a wet floor sign near the entrance.

After the argument with Daisy, Parker was so upset at having spilled cola all over her Team Werewolf t-shirt, that she ran out the opposite entrance door and into the parking lot. Just then, Fred, who was only paying attention to finding a parking spot as close to the entrance as possible, didn't see Parker until he hit her with his car. Parker suffered a deep laceration on her left forearm, which ultimately left an ugly scar.

A few minutes later, another avid vampire fan, Sara, came barreling through the entrance. She slipped on the wet floor and fell hard on her elbow. As she struggled to get up, she noticed she was sitting in a sticky puddle of cola and melted ice. Johnny came over to help her and noticed that her arm looked broken. Sara then went to the hospital for her broken arm. Other than having to wear a cast for six weeks and missing the opening of her favorite movie, Sara recovered fully and is back to normal.

Discuss all claims that Parker and Sara could raise from the events described above. Explain your answer.

VI.
(6 points)

Discuss the constitutionality under the FSM Constitution of

A. (3 points) A state statute prohibiting anyone from catching sharks within 50 miles of the outer reefs of any island in the state.

B. (3 points) A state statute levying an "Entertainment Tax" of 8% on all subscription fees received by enterprises providing cable television services to the public.

C. (3 points) A provision in a municipal constitution requiring that all national and state capital improvement project funds for projects in that municipality be deposited in the municipality's general fund for appropriation by the municipal council before the funds can be spent on projects in the municipality.

VII.
(15 points)

MxStores contracted with Architex to develop an architectural design for a new department and grocery store. MxStores told Architex that it envisioned an "upscale" store, while acknowledging that these were tough economic times. On April 1, 2011, MxStores and Architex signed a contract, that included this provision:

MxStores agrees to pay Architex for architectural design services, including master planning, budgeting, siting, grading and drainage, a fee equal to 7½% of the cost of implementing the design, except that and in addition to the foregoing, preliminary work shall be paid at the hourly rate of \$75. Architex must comply with cost limitations, if any, imposed by MxStores.

During the preliminary design phase, Architex and MxStores met to discuss design concepts. No cost limitation of the plan was discussed, although MxStores mentioned that it was having trouble selling upscale or luxury goods due to fewer tourists. On September 13, 2011, Architex presented its preliminary plan to MxStores and an invoice for 229 hours worked with a balance due of \$17,175 due.

MxStores paid the invoice and asked Architex to budget the cost of plan implementation. On October 2, 2011, Architex presented a \$1,352,600 cost estimate with an additional invoice of \$1,200 for 16 hours worked compiling the estimate.

On October 14, 2011, MxStores notified Architex that the economy required scaling back the plan and that any future plan must comply with a \$925,000 cost limitation.

On December 12, 2011, Architex presented its revised plan with an estimate of \$1,035,400, explaining that it could make no further cuts without jeopardizing the project's integrity.

MxStores demanded that Architex further revise the plan to satisfy the cost limitation. Architex repeated that it could not do so. MxStores then forwarded the plan to another design firm, which indicated that the current plan could not be reduced and that design planning would have to start from scratch. MxStores refused to pay any additional sums to Architex, demanded that Architex refund the sums already paid, and hired the other firm, which submitted a plan within the cost limitation.

Architex has contacted you for advice on whether it can recover any additional amount from MxStores or whether it must refund any money it had already received. What advice do you give? Explain your answer.

VIII.
(10 points)

Max Mayhem had a long history of criminal assaults and violence. He was well-known to the state police. His wife, Mary, finally had had enough of the assaults, criminal charges, and bizarre behavior and filed for divorce, and obtained an injunction for her personal protection. Shortly after Max was served with the divorce papers, he followed Mary to the store where she usually shopped. As Mary was getting out of the car, Max quickly approached her, pulled a handgun, told her to get in the front seat and drive away while mentioning, "if he couldn't have her, no one else was going to." Max sat in the back seat, giving Mary the opportunity to leave the front seat, with Max still in the back set, and run into the parking lot looking for help. Max finally extricated himself from the back seat and was last seen by Mary running into the store with the gun in his hand.

Mary called the state police on her cell phone and within minutes two officers arrived. Mary told them Max had run into the store with a gun and that was the last she saw of him. Both officers entered the store and found Max shopping in the women's clothing section, with no sign of the gun present. The officers approached Max with their weapons drawn, and told him, "don't move," and advised him that he was under arrest. One officer then asked Max, "Where did you put the gun?" Max pointed to a pile of cardboard boxes and said, "It's in the box labeled 'water pistols.'" the officer searched the pile of boxes and found the loaded revolver in the box labeled "water pistols." The other officer, who had remained with Max, saw the gun being retrieved, and then advised Max of all his rights as required by the FSM Constitution and statutory law. Max immediately told the police that he didn't want to talk to them and he wanted a lawyer.

Max was charged with a variety of criminal offenses. Max's public defender has filed a timely motion to suppress Max's statement. What is the basis for this motion? What should be the prosecution's response? How should the court rule on the motion?

IX.
(12 points)

Poll was an avid kayaker. On May 4, 2006, Poll went kayaking in Pohnpei Lagoon and Kolonia harbor in his brand new, state-of-the-art kayak. David, a citizen of the Marshall Islands, was operating a cabin cruiser in Kolonia harbor, enjoying both his recent success in a Pohnpei fishing tournament and a few too many beers. Poll noticed David motoring erratically toward him. Afraid that David did not see him, Poll began shouting and waving his paddle to make David aware of his presence. Despite Poll's warnings, David plowed into Poll's kayak from behind at a high rate of speed, flipping it over. Poll did not suffer any physical injuries, but his kayak, valued at \$2,000, was destroyed.

On June 15, 2012, Poll filed suit in the FSM Supreme Court alleging that David negligently operated his cabin cruiser, causing injury to Poll's property. He sought \$2,000 in damages. Process was validly served on David at his Majuro, Marshall Islands home. On July 27, 2012, David, with the help of his attorney, Slim Shady, filed an answer to the suit. David denied being negligent, but did not raise any affirmative defenses.

After dismissing Shady as his counsel, David has come to your law firm on Pohnpei seeking help for his defense. Your boss believes that David might be able to have the suit dismissed for lack of personal jurisdiction (FSM Civ. R. 12(b)(2)), lack of subject-matter jurisdiction (FSM Civ. R. 12(b)(1)), and failure to file the suit within the appropriate statute of limitations (6 F.S.M.C. 805; FSM Civ. R. 12(b)(6)).

Your boss has asked you to prepare a memorandum for him explaining the likelihood of David being able to raise and to prevail on each of these grounds, in advance of a meeting with David that will occur later today, August 2, 2012.

X.
(9 points)

In each of the following three cases, the defendants removed the case from the state court in which it was originally 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 because the FSM Supreme Court does not have subject-matter jurisdiction over it. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case removed from the Pohnpei Supreme Court in which a Pohnpeian citizen plaintiff is suing for breach of contract a corporation chartered under Pohnpei state law and owned by four shareholders — two of whom are Pohnpei citizens and the other two citizens of the United States who have been living on Pohnpei for a number of years.

B. (3 points) A case originally filed in the State Court of Yap in which Yammed, a Yap citizen, sued Yap Ship, Inc., a company incorporated in Yap and wholly owned by two Yapese citizens, for breaching their contract to transport his betelnut crop from Yap to Pohnpei on the company's vessel. Yammed's betelnut crop was lost overboard during a storm on the trip from Yap to Pohnpei.

C. (3 points) A case originally filed in the Chuuk State Supreme Court in which a Philippine citizen engineer sued for wrongful discharge a Marshall Islands construction company that had no FSM citizen shareholders.