

**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 1, 2013

ADMINISTERED IN CHUUK, KOSRAE, AND POHNPEI

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

* * * *

* * * *

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.	10
II.	17
III.	3
IV.	6
V.	7
VI.	6
VII.	11
VIII.	12
IX.	8
X.	13
XI.	7
TOTAL	<u>100</u>

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

GOOD LUCK.

Ethics

I. (10 points)

You are an attorney practicing law in the FSM. You represent the insurance company that insured a defendant in a personal injury case. You have done extensive investigation and research. Based on this work, you have evaluated the case to have a minimum settlement value of \$25,000 and a maximum of \$80,000. The insurance company has given you authority to settle up to \$45,000.

You have arranged a meeting with the plaintiff's counsel to discuss settlement of the case. In preparing for the meeting you plan your negotiating strategy. You decide to make an initial offer of \$13,000, which you think is a reasonable place to start since it is twice the plaintiff's health care expenses to date. Your strategy is to get some idea of how the plaintiff's counsel evaluates the case and then move up from your initial offer to settle in the \$40,000 range.

When plaintiff's counsel comes to your office you are shocked to see his disheveled appearance and, even more so, the smell of alcohol on his breath. Further, during the discussions it is readily apparent that plaintiff's counsel hasn't fully prepared the case and doesn't understand its value. After you make your offer of \$13,000, plaintiff's counsel wants to know how quickly the money can be paid. He indicates that if it could be done in the next day or so, he believes he can get his client to accept the offer.

- A. (5 points) Discuss your ethical obligations as they relate to representing the insurance company.
- B. (5 points) Discuss your ethical obligations as they relate to the conduct of the plaintiff's counsel.

Evidence

II. (17 points)

Your client Jack is on trial in the FSM Supreme Court for stealing a roast pig from a barbecue feast given by the national government at Palikir during a diplomatic reception. Three witnesses are scheduled to testify for the FSM against Jack.

The first witness, Fred, sells hats for a living. His strange beliefs about the creation of the world have led many people to question his sanity. He believes that the world we know is actually an underground "wonderland" and that people are only figments of some grand being's imagination. He and Jack have appeared together on radio shows and the local cable TV channel where they have roundly criticized each other's beliefs about the world's origin. More mundanely, Fred was convicted in 2005 of a crime on Guam and served 1½ years in prison there.

The second witness, Sara, was a cook at the barbecue, but she has refused to testify despite a court order to do so. Supposedly, she fears some severe governmental action against her if her testimony does not result in the conviction of your client. "They're after my head," she is alleged to have said. In place of the cook, the FSM plans to call a police officer. The officer intends to testify that, right after the theft, Sara said to the officer, "I saw Jack carrying away the pig, and not only that, Jack told me he stole it!"

The third witness, Thelma, is a young woman who is being treated for mental illness by a nurse because of her use of hallucinogenic drugs which began when she lived in Hawaii. The drug's main effect is to make Thelma believe she is alternatively growing and shrinking. The nurse's license to practice expired two years ago and he has not renewed it because he does not want to pay the licensing fee. The state has unsuccessfully sought to impose a treatment program on Thelma and you have transcripts of the two hearings it held on the matter. The transcripts contain full details about the Thelma's hallucinations and treatment.

Thelma lives on Chuuk and, by agreement between you and the prosecutor, her deposition was taken at her home and will be read into the record at trial. You and your paralegal traveled to her home for her deposition. On direct examination, Thelma testified that she saw Jack enter the barbecue and grab the pig. She firmly adhered to this story under your cross-examination. She also denied ever having used illegal drugs or having hallucinations. After the prosecutor left her home, Thelma told you and your paralegal that she thought the deposition was only a game. She said she was only pretending and that she had not seen Jack do anything. She also said she is 40 feet tall.

Your motion to continue the trial and your motion to re-depose Thelma have already been denied.

The FSM also wants to admit an unsigned note allegedly written by your client. The note reads, "I'm sorry. I didn't mean to steal the pig." Your client denies having written the note. To prove that your client did write the note, the FSM intends to call someone who regularly plays cards with your client and who has seen him writing out scores, checks, and IOUs.

A. (5 points) Based on what you know about Fred, how would you attack his testimony? Discuss fully.

B. (5 points) Will the police officer's testimony be allowed? Why or why not?

C. (4 points) (1) What will you do about the substance of the Thelma's deposition testimony? (2) Would you be successful if

Evidence

II.

(continued)

you tried to get the nurse to testify in order to challenge Thelma's deposition testimony? Why or why not? Discuss any possible use in the criminal case of Thelma's hearing transcripts.

D. (3 points) Will the FSM be able to overcome any admissibility challenges to the unsigned note? Discuss fully.

Evidence

III. (3 points)

Dan is a heavy equipment operator. One morning just after the start of work at a construction site, Dan unaccountably ran his bulldozer up against the wall of the store next door, causing it to collapse and injure several store employees inside.

The injured employees sued Dan and his employer. Dan's employer claims that it is not liable to the injured employees because Dan's actions were reckless and wanton and in violation of company policy that heavy equipment not be operated while under the influence of intoxicating substances.

At trial, during the company's cross-examination of one of the injured store employees, the company's attorney asks if, during a traditional apology ceremony while Dan was still in the hospital, Dan's wife had apologized for Dan and said that she and Dan had been up until 3 a.m. the night before and they had been drinking beer and Pohnpeian *sakau* heavily.

Dan objects. On what grounds? Should the judge allow the question to be asked?

IV.
(6 points)

Paula Plaintiff filed a civil suit in the FSM Supreme Court against Don Defendant. In that action, Paula timely and properly served on Don a set of ten interrogatories. Don, based on his belief that all ten interrogatories called for the disclosure of privileged information, knowingly failed to respond in any way to any of the interrogatories.

Under the FSM Rules of Civil Procedure, discuss what courses of action are available to Paula in light of Don's failure to respond to the set of interrogatories.

V.
(7 points)

Discuss the constitutionality of the following under the FSM Constitution:

A. (4 points) A state statute entitled "Keeping Outer Island Youth Safe and Sound" which establishes a statewide curfew between 10 p.m. and 5 a.m. for females under the age of 18 who come from or live in the state's outer islands. The statute was enacted because it was shown in a study that underage outer island females were most likely to be assaulted, injured in an accident, or become pregnant between the hours of 10 p.m. and 5 a.m.

B. (3 points) A national statute requiring that any campaign speech made by a congressional candidate for broadcast had to be first recorded and submitted to the national election commissioner for his review at least 24 hours before the intended broadcast time and providing that violators are subject to a \$500 fine or one year imprisonment, or both

VI.
(6 points)

In both of the following cases, the defendants removed the case to the FSM Supreme Court trial division from the state court in which it was originally filed. 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 lawsuit removed from the State Court of Yap between a company wholly owned by Yapese citizens and a Yap state-owned inter-island field trip ship over a bill of lading or a contract for the shipment of goods from the main island of Yap to Ulithi on the ship's most recent voyage.

B. (3 points) An employment dispute removed from the Pohnpei Supreme Court between a Philippine citizen and a Guam corporation in which the Guam corporation raises as a defense that it complied with national law, the Protection of Resident Workers Act, FSM Code Title 51, when it hired and paid the Philippine worker.

VII.
(11 points)

Investigating a homicide, the police came to suspect Tom and Jerry. The police believed that the two had broken into a house, been surprised by the owner, and had ended up killing him. The police further believe that Tom and Jerry hid the evidence of the crime in the house where Tom lives with his mother.

When the police contacted Tom's mother and asked her for permission to search the house, she consented. In the common room, the police found and seized a DVD player that matched one taken from the victim's house. In Tom's bedroom the police found a blood-stained shirt, belonging to Jerry.

The next day, the police arrested Tom and Jerry. After receiving his advice of rights to remain silent and to an attorney, Tom invoked his right to counsel. Nevertheless, on the way to the police station, Tom said, "I guess it's all over for me now." The arresting officer asked Tom what he meant. Tom then confessed to the killing.

Tom and Jerry will be tried separately for murder.

Each defendant wishes to suppress the following evidence of the crime:

- 1) the DVD player;
- 2) Jerry's shirt; and
- 3) Tom's confession.

Discuss under the FSM Constitution whether the motions will be granted.

VIII.
(12 points)

You are a justice of the FSM Supreme Court sitting in the trial division preparing for the sentencing hearing of Astatine, a former FSM public official who has pled no contest to charges that he embezzled money from the government.

Astatine has filed a motion seeking your recusal from the case. The motion is supported by an affidavit which includes the following sworn statement: "During the sentencing hearing in FSM v. Quicksilver, where the defendant had also been found guilty of embezzling money from the government, the judge presently presiding over this case said, 'Public corruption is a major threat to the FSM and anyone who embezzles from public funds must get the maximum sentence.'"

Astatine's motion relies on FSM Code Title 4, subsections 124(1) and (2)(a) which read:

§ 124. *Disqualification of Supreme Court Justice.*

- (1) A Supreme Court justice shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (2) He shall also disqualify himself in the following circumstances:
 - (a) where he has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding;

You recall the Quicksilver case but don't remember making that statement. You listen to Quicksilver sentencing hearing recording. It confirms that your statement was, "A judge should not be lenient merely because only money was taken. A judge should consider embezzlement a serious threat to the government's integrity and proper functioning and should start the sentencing hearing with the presumption that the maximum sentence authorized by statute could be imposed."

Astatine's motion also contends that, as a matter of due process, you must ask another judge to rule on the recusal motion because you will obviously be biased against the motion.

- A. (3 points) Must you transfer this motion to another judge? Why or why not?
- B. (8 points) Must the motion be granted? Why or why not?

IX.
(8 points)

Ben owns a marina on Pohnpei. He hired Contractor to replace all the docks at his marina. Although the contract specified that the dock's top surface would be made of pressurized wood, Contractor used a composite which was usually indistinguishable from pressure-treated wood. The material was comparably-priced to pressure-treated wood, and had comparable properties, including strength, slip and rot-resistance, longevity, and maintenance requirements. When the work was finished, Ben refused to pay Contractor, claiming that Contractor had not performed in accordance with the contract. Contractor filed a civil action in the FSM Supreme Court to recover damages from Ben for breach of contract.

Discuss whether Contractor is entitled to recover on his contract with Ben.

General

X. (13 points)

On April 9, 2013, George Eagle, and his wife, Inca Eagle were parked in their vehicle in the vicinity of Mie's Store. At that time, six unidentified persons wearing shirts with "Police" printed on them and riding in a pick-up truck with "Police" painted on it also parked in the vicinity of Mie's Store. These persons were untrained and unpaid police "trainees." They were, however, acting under color of law and under the authority of the State Department of Public Safety. The six persons grabbed, pinned down, kicked, punched, and handcuffed George Eagle. This amount of force was not needed to place Mr. Eagle in custody and was thus unnecessary. The six persons then carried Mr. Eagle to their pick-up truck, threw him in the back of the pick-up truck, and transported him to the police station and jail. Mr. Eagle was never informed of the reason why he was detained and imprisoned. While being transported to the police station and jail, one of the officers stepped on Mr. Eagle's arm while his hands were handcuffed. Mr. Eagle was imprisoned until around 11:00 p.m. that night when he was released. He was never informed of why he was being detained although he requested that information. Mr. Eagle was never charged with a crime.

Due to the actions of the six persons who arrested Mr. Eagle, he suffered pain and swelling of his right arm, tenderness to his neck and right shoulder, and abrasions to his wrists. During the incident, Inca Eagle, was also struck by one of the six persons who grabbed her and kicked her left thigh. This person also used a baton to push the Inca Eagle against a vehicle and also pushed her onto the ground and kicked her in the back. At the time this occurred, Mrs. Eagle was seven months pregnant. The incident caused pain and bruising of her leg where she was kicked, pain in her stomach, legs, and back. Inca got treatment for her injuries by local massage and missed a week of her work as a cashier. George Eagle went to the hospital for treatment of his injuries after two days of unsuccessfully trying to recover at home. A doctor examined him and found his right arm swollen from humerus to wrist with moderate degree of tenderness, limited flex, extension, and abduction of the right shoulder, and noticeable abrasions on bilateral wrists. The doctor provided him with ibuprofen and antibiotics, and advised him to rest his arm in a sling in a neutral position with complete bed rest for one week.

Mr. & Mrs. Eagle sue the State, its Department of Public Safety, and its Chief of Police. These defendants are governmental entities and a government officer.

- A. (9 points) What causes of action might the Eagles plead against these defendants?
- B. (4 points) What sort of damages might they obtain?

XI.
(7 points)

Define and discuss the requirements of the following terms in FSM law:

- A. (3 points) pendent jurisdiction**
- B. (2 points) temporary restraining order**
- C. (2 points) custom and tradition**