

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 3, 2000

Administered in Chuuk, Kosrae, and Pohnpei

**Supreme Court of the
Federated States of Micronesia**

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NOTE

YOU WILL BE PERMITTED FIVE (5) HOURS TO COMPLETE THIS EXAMINATION. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. TAKE YOUR TIME. BEFORE BEGINNING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY 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 STATUTORY SUPPLEMENT THAT MAY BE USEFUL IS ATTACHED. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I.	12
II.	10
III.	14
IV.	20
V.	14
VI.	5
VII.	5
VIII.	5
IX.	4
X.	3
XI.	8
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE WILL BE 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE EVIDENCE QUESTIONS ARE VIII-XI. THE ETHICS QUESTIONS ARE VI-VII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(12 points)

Javier is a citizen of Argentina. He arrived in the Pohnpei on Air Nauru flight from Australia. FSM Immigration initially denied him entry to the Federated States of Micronesia because he did not have an entry permit or an onward ticket. Javier immediately went to the Air Micronesia ticket counter and bought a one-way ticket to Guam. This satisfied FSM Immigration although it was unknown whether Javier was eligible for entry to Guam. FSM Immigration then allowed Javier entry as a visitor for 30 days.

Javier's purpose in coming to the FSM was to rendezvous with friends who were sailing a yacht from Manila to Panama. For some reason the yacht never arrived. Nevertheless while cruising the bars of Kolonia Town, Javier met a couple from Switzerland who were traveling on a sailboat with the eventual destination of Tahiti. They agreed to take him on as crew if he would help provision the boat. Javier cashed in his air ticket to Guam and used the money to help buy supplies and equipment for the Swiss couple's boat.

Two days' sail out of Pohnpei, the boat was caught in a violent storm which dismasted the boat. The boat limped into Kosrae on its auxiliary engine which then broke down. The Swiss couple sold what they could off the boat and sold what was left of the boat and engine to someone on Kosrae. All three then used some of the money to take the field trip ship back to Pohnpei.

With the assistance of FSM Immigration officials the Swiss couple obtained a loan from the Swiss government allowing them to return to Switzerland. Javier has remained on Pohnpei, penniless. The FSM government has been paying for his food and lodging which he has promised to repay when he can. He now owes the FSM government \$1100. The Argentine government has offered to provide Javier a loan for an airline ticket back to Argentina if he will sign a promissory note promising to repay the loan within 60 days of arriving in Argentina.

Javier refuses to sign the note. He has made arrangements to sail on another that is in Pohnpei harbor awaiting repairs. The yacht's owner confirms that he is willing to hire Javier on as crew and that his yacht will be ready to sail in a month or six weeks. Javier claims that he cannot sign the note because once he returns to Argentina they will put him in jail for not paying the note on time, and that he has no prospect of paying the note on time because the Argentine economy is so bad he could not possibly get a job to earn enough money in time. He also hints that there are other reasons why returning to Argentina would be dangerous.

I.
(cont.)

The FSM government is tired of paying for Javier's upkeep and is not happy that he has refused to take his government's loan offer. The FSM Attorney General decides to charge Javier in a criminal information with violation of 50 F.S.M.C. 112(1) and (2). [see copy of statute attached to bar exam]

None of the facts recited above are in dispute. What defense(s) should Javier's counsel raise on his

behalf? Would you expect the judge to convict or acquit Javier after trial?

II.
(10 points)

Define and discuss the requirements of the following terms:

- A. Case or Dispute**
- B. Ex post facto law**
- C. Summary judgment**
- D. Burden of proof**
- E. Probable cause**

III.
(14 points)

Bishek was an elected member of a state legislature. In the Legislature he holds the office of Deputy Floor Leader. Sometime after his election rumors spread that he had voted for funding for several "public projects" for some constituents because those constituents had agreed to pay him 20% of whatever they might receive from the Legislature. When the speaker and some other members tried to talk to him about the rumors he became abusive and told them to mind their own business.

The speaker called for a special session of the Legislature to consider the Governor's supplemental budget request and to consider "such other and further legislative matters that may be submitted to the Legislature during the special session by the Governor or by the Legislature's presiding officers." This call was announced on the state radio, a copy was mailed to each legislator, and a copy was put in each member's box at the Legislature.

When the Speaker called the session, Bishek was in Honolulu on business for the Legislature's Resources and Development Committee studying the tourist industry there. He spent a month there. He did not receive the call.

On the third day of the special session, a resolution was introduced calling for Bishek's suspension from the Legislature. It was adopted two days later. A new Deputy Floor leader was then elected. The Legislature took no other action during the special session.

The state Constitution's provision concerning the election, qualification, and discipline of its Legislature's members is similar to the FSM Constitution's provision for the election, qualification, and discipline of members of Congress.

Bishek returned home, found the Legislature concluding its session, and that he had been suspended and that the sergeant-at-arms had orders to bar him from entering the legislative chamber. He consults you, an attorney in private practice, and shows you the letters from the Speaker and the Legislature's resolutions removing him from the post of deputy Floor Leader and suspending him from membership for the remainder of his term. Bishek would like to file a lawsuit and wants to know what kind of claims he could make, what kinds of problems he might encounter, and what relief he could obtain. Discuss fully.

IV.
(20 points)

Antigua, a citizen of Pohnpei, is the operator of a small cargo vessel, the *Dernita's Folly*, which sails regularly between Pohnpei and Chuuk Lagoon, stopping in the Mortlocks along the way to pick up and discharge passengers and cargo. *Dernita's Folly* is owned by a Barbuda Corporation. Barbuda Corp. bought the vessel with funds it received from the FSM national government as a development project. Barbuda Corp. received its startup operating capital from Pohnpei state government about one month after the corporation had been formed and had bought *Dernita's Folly*. Barbuda Corp.'s incorporation papers stated that Antigua and five other incorporators, all Pohnpei citizens, and each paid in \$3,000 in startup capital. The incorporation papers were filed just before Barbuda Corp. bought *Dernita's Folly*.

Dernita's Folly's seventh voyage was unlucky. While at sea between Pohnpei and Chuuk one of the crewmen, a Pohnpeian citizen named Nevis, was injured when the rusty stairway into the engine room gave way and he fell. While docked in Chuuk, a stevedore, a Chuukese citizen named Montserrat, was injured on the dock when a cable parted on one of the ship's booms and a load of copra fell to the dock. On returning to Pohnpei Antigua discovered that what little money there was remaining in Barbuda Corp.'s coffers had been stolen by Barbuda Corp.'s bookkeeper who had left the country.

Shortly thereafter, Nevis filed suit for damages against Barbuda Corp. and *Dernita's Folly* in Pohnpei Supreme Court. Montserrat filed suit for damages against Barbuda Corp. and *Dernita's Folly* in Chuuk State Supreme Court. Mobil Oil Micronesia, wholly owned by a foreign corporation, then filed suit in the FSM Supreme Court against Barbuda Corp., *Dernita's Folly*, and also against Antigua and the other five incorporators seeking its unpaid fuel bills in both Pohnpei and Chuuk, for *Dernita's Folly's* last three voyages.

- A. (3 points) Is it proper for Nevis to file his suit in Pohnpei Supreme Court? Why or why not?
- B. (3 points) Is it proper for Montserrat to file his suit in Chuuk State Supreme Court? Why or why not?
- C. (4 points) On what basis might Mobil have a cause of action against Antigua and the other incorporators?
- D. (3 points) What other relief may be sought by which plaintiff(s), if any, and against which defendant(s) and on what basis?

IV.
(cont.)

- E. (3 points) Barbuda Corp. and *Dernita's Folly* have hired you to defend them in all three lawsuits. What initial steps might you take in each suit in order to simplify and consolidate the matters?
- F. (4 points) What further steps may your clients take to defend against the plaintiffs' claims and any relief they might seek?

V.
(14 points)

The constitution of AB, a state in the FSM, provides that the chief justice is the chief administrator of the court system. It also provides that the Chief Justice annually provide a proposed budget of the court's needs to the governor, who in turn submits a budget to the state legislature to fund all branches and agencies of the state. Annually the legislature appropriates funds from one general fund to the branches and agencies. The general fund is administered by the Director of Finance, a state officer in the executive branch. The administrative office of the court submits requisitions to the Director of Finance for funds appropriated to it. The state's Financial Management Act requires the Director of Finance to pay such funds within 30 days.

The state court has experienced the following difficulties:

1. The court's budget for FY 2001 requested funds to purchase a new car for the Chief Justice. The governor's budget eliminated this item.
2. The court's budget for FY 2001, based on the experience of FY 2000, requested the same amount for electric power. This amount was halved in the budget submitted to the legislature.
3. Although requested in the court's budget, the governor's budget deleted the annual lease payment for the landowner of the courthouse property.
4. The Legislature passed the Governor's proposed budget unchanged.
5. In October 2000, the court submitted several requisitions, with supporting documents, to the Director of Finance. By October 2001 none had been paid, nor had any later submitted requisitions and invoices been paid.

The Chief Justice requests your assistance. What possible legal remedies can you advise him exist?

VI.
(5 points)

Hermano is an attorney admitted to the FSM bar. He has a number of business interests. He is a member of the Board of Directors of the Bank of the Carolines, a bank registered in the FSM. He is also the owner of Fitikoko Construction Company.

Hermano signed a contract with the Bank of the Carolines to act as its attorney in collecting loans that the borrowers had defaulted on. The terms of the agreement included Hermano would receive 50% of all money he collected on defaulted loans and that he would be paid \$100 for every lawsuit he had to file in his collection efforts.

The Bank of the Carolines sought to build a new branch office in an FSM state. Fitikoko Construction Company was the only bidder on the project. Before the Bank of the Carolines board of directors voted to accept Fitikoko's bid, Hermano informed the board of his ownership interest in Fitikoko. The vote (including Hermano's) was unanimous to accept the bid.

Comment on any ethical issues raised by these facts.

VII.
(5 points)

You represent Drudge, a criminal defendant charged with burglary and rape. In consultation with your client he tells you that he has an alibi for the time in question, a Friday afternoon. Drudge says that he was fishing outside the reef with his close friend, Clancy, at the time the burglary and rape were supposed to have taken place, and that both he and Clancy will testify to that at trial.

You remember that Friday afternoon very well because that Friday afternoon you attended a going-away party for one of your co-workers at a local hotel. While your party was a private function the public area of the hotel was visible from where your party was held. You have a vivid memory of seeing Clancy there, shooting pool and winning all afternoon. You suspect that that if Clancy testifies he was with Drudge it will not be truthful.

What ethical obligations are involved here? And what steps do you take to satisfy your ethical obligations?

VIII.
(5 points)

At Drudge's probable cause and bail hearing, a police officer, Ishikoff, testified concerning his investigation of the alleged burglary and rape. He also testified had heard rumors from reliable sources that Drudge's friends had arranged for Drudge to leave the state by boat if he were released from jail.

A. (2 points) Defense counsel objects. On what ground(s)? How should the judge rule?

B. (3 points) By the time of trial, Ishikoff has died. The prosecution seeks to introduce at trial Ishikoff's prior testimony at the probable cause and bail hearing. Defense counsel objects. On what ground(s)? Should Ishikoff's testimony be admitted?

IX.
(4 points)

During the prosecution's case-in-chief, Drudge's alleged rape and burglary victim takes the witness stand. On cross-examination defense counsel asks if it is true that she had had consensual sexual relations with Drudge at least a dozen times in the past and that on the occasion for which Drudge is accused of rape she also consented.

The prosecution objects to this line of questioning. On what grounds? What should the judge take into consideration when ruling on the objection and how should he rule?

X.
(3 points)

Dili is a defendant in a criminal case charged with homicide. He does not deny that he killed the victim. He claims that he acted in self-defense. In his case-in-chief he calls his six-year old daughter, Timor, as a witness to corroborate his self-defense claim.

The prosecutor objects. On what grounds? What considerations will the judge use to rule on the objection, with what likely result?

XI.
(8 points)

Victor was drinking with his friends late into the night. When he did not return home by the following morning, his brother and sister searched for him. They found him dead in the brush. The cause of death was "heart punctured by a metal dart."

The vigorous police investigation centered on those with whom Victor had been drinking, and was narrowed to three (Sichuou, Kelly and Chut) who were last with Victor. Kelly was charged with the killing. Sichuou was a witness for the government. Chut was called as a witness. Chut declined to answer each of the prosecutor's questions on the ground that his answer might incriminate himself.

While in police detention Chut had implicated himself in the crime: he stated that he had been present during the entire matter, that the three of them had quarrelled with Victor and agreed to kill him, and that Kelly had shot the speargun that killed Victor. The statement had been given after Chut had been advised of and waived his rights under 12 F.S.M.C. 218 of the Code of Criminal Procedure and of his "Miranda" rights.

The prosecutor, through the detective who took Chut's statement, offered the statement in evidence. Defense counsel objects. What arguments could be made in favor of admission and against admission of Chut's statement? What do you expect the court's ruling will be, and for what reason(s)?