

**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**

MARCH 7, 2013

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.	10
II.	17
III.	3
IV.	13
V.	8
VI.	9
VII.	13
VIII.	13
IX.	9
X.	<u>5</u>
TOTAL	100

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)

Lawyers Lenny and Sally have been practicing for many years. They often concentrate in family law. Their clients have expressed sincere gratitude for the work they do, both for their competence and for the civility they display to their clients. Because of increased competition, bad luck, general economic slowdown, or for reasons unknown, the volume of their family law practice is at an all-time low. In order to "turn around" the situation, they hire a consultant. The contract's terms include that the consultant will receive 3% of the gross family law practice billings for the next year. Lenny and Sally would have preferred to pay the consultant a flat fee or an hourly rate, but they could not afford it.

Lenny and Sally agree to implement several innovative marketing strategies. Previously they would agree to mediate a marital separation either for a flat fee or an hourly rate and withdraw from representation of both if the mediation process broke down.

Lenny and Sally now agree to not only withdraw, but to also charge no fee for the mediation if the mediation process breaks down. In addition, they realize they aren't the only ones suffering from economic hardship. Thus, while before they would not handle a divorce on a contingency fee basis, they agree to do so now if the client cannot afford to pay an hourly rate or a flat fee. Also, they set the maximum contingency fee at 15% (which is well below typical contingency fees in the FSM for personal injury cases).

Also, because each is offended by the growing problem of parents who fail to pay child support, Lenny and Sally offer to include in their contingency fee contracts a provision that for 5% of child support payments collected, they will make it their responsibility to ensure that child support is paid.

Is the conduct of Lenny and Sally proper under the FSM ethical rules? In particular:

A. (4 points) Is it proper for a lawyer to hire a consultant to assist in promoting the law practice? If so, are the terms of the consultant's contract with Lenny and Sally proper?

B. (3 points) Does refusing a fee for a failed mediation subject Lenny and Sally to discipline?

C. (4 points) Does the contingency fee for the divorce or for the child support collection subject Lenny and Sally to discipline?

Evidence

II.

(17 points)

[no examinees took this part]

Evidence

III.

(3 points)

[no examinees took this part]

IV.
(13 points)

Drake beat and seriously injured his wife. When police officers arrived at the scene, Drake walked up to them and said, "I'm guilty. I did it. Arrest me." One of the officers asked, "What is it that you did?" Drake again said that he was guilty and that he knew he was going to jail. While the other officers were waiting for medical assistance to arrive, Drake commented that he should have killed his wife.

A few minutes later, Drake started screaming and behaving erratically. Drake was then handcuffed, taken to the police station, and arrested. After one of the officers read Drake his rights, Drake said, "I messed up. I'm sorry. I don't want to say any more." Although the officer had advised Drake that he had the right to an attorney, Drake did not ask for one.

One hour later, an officer returned to the room where Drake was being held. The officer did not re-advise Drake of his rights, but reminded him that he was still subject to what had been read to him before. The officer asked whether Drake wanted to make a statement. The officer also told Drake that he understood that Drake had assaulted his wife because he suspected her of having an affair. The officer said that if Drake was really sorry, he would make a statement. Drake then signed a form waiving his rights to silence and to an attorney and gave a full confession.

Drake filed a pretrial motion to suppress all of his statements.

At trial, Drake was acquitted of the attempted murder charge, but was convicted of aggravated assault. He appealed his conviction, claiming that he had ineffective assistance of counsel. The prosecutor told defense counsel that if Drake prevailed on appeal and had his conviction overturned, Drake would be re-tried on all of the original criminal charges, including the attempted murder charge. The prosecutor also told defense counsel that if Drake was re-convicted of aggravated assault, the prosecutor would ask that Drake receive a longer sentence than the one originally imposed.

A. (9 points) Discuss how the court should have ruled on Drake's motion to suppress.

B. (4 points) Assume that Drake appealed his conviction and it was reversed. Discuss the permissible scope of the new trial and the sentence that could be imposed if Drake is convicted.

V.
(8 points)

Discuss the constitutionality under the FSM Constitution of

- A. (3 points)** A state statute that levies an annual, flat-rate tax of \$365 on each hotel room in the state.
- B. (2 points)** A national statute that imposes a \$2 tax on each piece of luggage brought into the FSM by airline passengers.
- C. (3 points)** A state law provision that in order to qualify under the local preference for procurement contracts with the state government, the contractor not only has to be a citizen of the state but also has to be a "pure" or "true" citizen of the state.

VI.
(9 points)

In each of the following 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 Chuuk State Supreme Court that alleged the breach of a contract in which the Pohnpei Transportation Authority, a Pohnpei state agency, sold heavy earth-moving equipment to the Chuuk State Public Works Department.

B. (3 points) A breach-of-contract case removed from the Kosrae State Court between a citizen of the Philippines and a Japanese construction company over the non-payment of the Filipino's wages.

C. (3 points) A lawsuit removed from the Pohnpei Supreme Court brought by a citizen of the Philippines against a corporation wholly owned by United States citizens alleging wrongful termination based on racial discrimination.

VII.
(13 points)

Roberta Restaurateur arrived at work one morning and discovered that the municipality's Beautification and Tourism Enhancement Agency (the BTEA) had issued a citation to her restaurant for a violation of the municipal ordinance prohibiting neon signs. The citation informed her that, under the ordinance, no action could be taken until she had an opportunity to contest the citation at a hearing before the BTEA. But before a hearing could be held, the BTEA removed the offending sign.

When Roberta contacted the BTEA, she was informed that the sign was so ugly that the agency decided to ignore normal BTEA rules and find a violation without conducting a hearing. The BTEA board members told Roberta her only recourse was an appeal to the Mayor.

The next day, Roberta received a letter from the Mayor informing her that, if she appealed, he planned to affirm the BTEA's decision because the sign was such an eyesore. Roberta then filed suit in a court of proper jurisdiction seeking judicial review of the BTEA's actions.

- A. (5 points) Discuss whether Roberta can obtain judicial review.
- B. (4 points) If she is successful in obtaining review, what claim(s) can she raise? and
- C. (4 points) What is or are the appropriate remedy or remedies?

VIII.
(13 points)

On February 1, 2012, Peter sends the following letter to David:

"Dear David, I offer to sell you my apartment building just outside Kolonia, Pohnpei for \$75,000. I will keep this offer available to you until February 15, 2012."

On February 2, 2012, Peter meets Betty, a friend of his from Australia, and tells her about his offer to David. Betty knows that Charlie, to whom Betty owes \$125,000 on an unrelated antecedent debt, would gladly release her from this debt in exchange for Peter's building. Betty tells Peter:

"Peter, I'm sure I could get more than that an amount from Charlie. Therefore, I will pay you \$100,000 for your building."

In response, Peter says, "You have a deal!" Betty gives Peter a \$1,000 cash deposit on the building and they agree to close the deal on February 15, 2012.

On February 3, 2012, David receives Peter's letter and responds immediately as follows:

"Dear Peter. Thank you for your letter of February 1, 2012. I accept your offer. Sincerely yours, David."

- A. (4 points) Does an enforceable contract exist between Peter and David? Discuss
- B. (5 points) Does an enforceable contract exist between Peter and Betty? Discuss
- C. (4 points) If no enforceable contract existed between Betty and Peter, could Betty require Peter to return the \$1,000 deposit that she gave Peter on February 2, 2012? Discuss.

General

IX.

(9 points)

Sal had a small vessel, the *Auroch*, capable of carrying passengers and cargo to the state's outer islands and to the outer islands of neighboring states, if necessary. One of the outer islands is slated to have many of the coral heads in its lagoon removed so that seaplanes will have a sheltered place to land and so that cargo-carrying vessels larger than the *Auroch*, can enter the lagoon and anchor.

Blastco contracts with Sal to carry the explosives needed for the job to the outer island. Two days before departure, the cargo is loaded aboard the *Auroch* at the state's main port facility. Blastco, which had all the proper permits, provides Sal with special written instructions for the care and transportation of the explosives. Sal did not bother to read them. Unfortunately, the part of the cargo hold where Sal stowed Blastco's cargo, became, due to the unusual hot weather, warmer than was safe for the cargo. Also, that part of the hold was not well-ventilated or cooled and fumes from the engine room seeped in there.

The next day, it was very hot. Something caused the *Auroch's* cargo to detonate early that afternoon after the temperature in the *Auroch's* hold had reached dangerous levels.

The explosion destroyed the *Auroch*, which sank, and severely damaged, but did not sink, a nearby vessel, the *Bison*, and damaged the port facility. Luckily, no one was injured because everyone had gone to lunch and not yet returned.

What cause(s) of action might the state's port operator and the *Bison's* owner plead in a lawsuit against Sal? Explain.

General

X.

(5 points)

Detective Caine lawfully arrested Dobbs at his house for the murder of Jon J'onzz. On the way to the police station, Caine pulled the patrol car into an inconspicuous side road, took out his pistol, and laid it on the front seat within Dobbs's view. Caine read Dobbs all of his rights and then told Dobbs that they would not be going anywhere until Dobbs told him about the murder. When Dobbs said that he wanted to see an attorney, Caine showed him a picture of Johnny Cochrane. Dobbs then said he would like a light for a cigarette. Caine responded, "Speaking of light, how would you like to shed a little light on the murder of Jon J'onzz?" Dobbs then confessed to the murder.

Discuss whether Dobbs's confession can be used against him at his trial for the murder of Jon J'onzz.