



**NORTHERN MARIANA ISLANDS
JUDICIAL DISCIPLINARY PROCEDURE**

Effective [insert date]

Exhibit A

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Rule 1. Scope, Authority and Purpose

- (a) **Scope.** These rules are promulgated pursuant to N.M.I. Const. art. IV, §3 of the Constitution of the Commonwealth of the Northern Mariana Islands. They apply to all proceedings before the investigating Judge and staff and the Supreme Court hearing panel involving the discipline or temporary removal of judges.
- (b) **Authority.** These disciplinary rules extend to every judge in the Commonwealth of the Northern Mariana Islands.
- (c) **Purpose.** The purposes of these rules shall be to protect the public from any improper conduct and behavior of judges; to preserve the integrity of the judicial process; to maintain public confidence in the judiciary; to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and to provide for the expeditious and fair disposition of complaints of judicial misconduct.
- (d) **Citation.** These rules are to be called the Commonwealth Rules of Judicial Disciplinary Procedures and shall be cited as “Com. R. Jud. Dis. P.”

Rule 2. Definitions

In these rules, unless the context or subject matter otherwise requires:

- (a) **"judge"** means any justice, judge or judge pro tempore of any court of the CNMI and also includes a former judge who retired, resigned or was terminated from office before or during the course of a disciplinary proceeding;
- (b) **"investigating Judge"** means the Judge or Judge pro tempore appointed to investigate a complaint, and is inclusive of the Judge's staff who may also be tasked with investigatory responsibilities;
- (c) **"subject judge"** means the judge or justice under investigation;
- (d) **"shall"** is mandatory and "may" is permissive;
- (e) **"formal hearing"** means the public proceeding before the Supreme Court panel, after the investigating Judge has referred the matter, at which the issues of law and fact raised by the formal charges and answer are tried;
- (f) **"staff"** means any person in the employment of the CNMI Judiciary or any judge pro tempore who assists in any aspect of an investigation under these rules;
- (g) **"recommendations"** means the formal report submitted by the investigating Judge to the Supreme Court panel which details

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the facts found as well as the recommendation as to whether a formal hearing should go forward;

- (h) **“temporary removal”** means a removal from the bench but not an impeachment or removal from the elected office;
- (i) **“investigation”** means an inquiry into allegations of misconduct, including a search for and examination of evidence concerning the allegations by the investigating Judge, which may conclude in an outright dismissal of the complaint or a recommendation to the Supreme Court for a full hearing;
- (j) **“misconduct”** means any conduct by a judge which constitutes grounds for discipline (see Rule 6A);
- (k) **“public reprimand”** means a written reprimand in the form of a written decision which is imposed in person or served upon a judge by certified mail;
- (l) **“reasonable cause”** means a reasonable ground for belief in the existence of facts warranting the filing of formal charges for discipline or a temporary removal of a judge from the bench;
- (m) **“disability”** includes both physical and mental incapacity;
- (n) **“notice of formal proceedings”** means a written report to the Supreme Court which may include a recommendation that the Supreme Court hold a formal hearing based on a complaint and may include recommendations for findings and appropriate discipline;
- (o) **“closed file”** means a file containing a prior official complaint and all information gathered in response, including testimony and hearing decision, against a subject judge.

Rule 3. Organization and Administration

- (a) **Investigation and Hearing.** The investigation and hearing of a matter of judicial discipline shall be directed by the Supreme Court.
- (b) **Report of Misconduct.** Any complaint against a judge for judicial misconduct shall be directed to the Chief Justice of the Supreme Court. Reporting forms will be available in the Supreme Court Clerks’ Office, but a report may also be made by letter.
- (c) **Investigatory Phase.** An investigating Judge shall be appointed by the Chief Justice unless the complaint is against the Chief Justice, in which case the investigating Judge shall be appointed by the next most senior Justice. If all of the currently sitting Justices recuse, then a Judge pro tempore shall be

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appointed for the purpose of appointing the investigating Judge. The investigating Judge will:

- (1) Receive the information, allegation, or complaints in writing only;
- (2) Make a preliminary evaluation;
- (3) Conduct an investigation if warranted;
- (4) Recommend a disposition;
- (5) Dismiss complaints that are frivolous, unfounded, or solely appellate in nature without further investigation and without notifying the subject judge;
- (6) Employ court staff who are instructed that the proceeding is confidential;
- (7) Employ special counsel, private investigators and other experts as necessary to investigate and process the matters before the Supreme Court, if necessary; and
- (8) Make and issue public statements only as authorized by these rules.

Rule 4. Powers

- (a) **General powers.** Acknowledging the constitutional grant of judicial powers, the investigating Judge shall have the power to receive information, investigate, conduct hearings, take informal remedial action, issue subpoenas and make recommendations to the Supreme Court concerning allegations against judges of willful misconduct in office, persistent failure or inability to perform judicial duties, habitual intemperance, disability, and/or violations of the Code of Judicial Conduct, as amended, or the American Bar Association's Model Rules of Professional Conduct (as adopted pursuant to Com. Disc. R. 2(a)), as amended.
- (b) **Witness expenses.** Per diem and mileage to witnesses may be paid at the rate specified for non-salaried public officers for the time which attendance is required. Witnesses may apply to the Supreme Court for reimbursement of per diem expense and mileage after completion of their participation in disciplinary proceedings.
- (c) **Contempt powers.** The misconduct of any person in the presence of the investigating Judge while he or she is performing official duties, resistance to or obstruction of any lawful process, order or rule herein, or violation of any rule of confidentiality pertaining to commission proceedings shall constitute contempt. Any participant in a judicial discipline proceeding may be cited for contempt.

Rule 5. Disqualification

- (a) **Subject Judge.** A judge shall not participate in any proceedings involving his or her own discipline or temporary removal.
- (b) **Self Disqualification.** A judge may disqualify himself or herself in a particular matter stating the reason for the disqualification.
- (c) **Propriety questioned.** If the propriety of a judge's participation in a particular matter is questioned, the issue shall be decided by the Supreme Court.
- (d) **Further Proceedings.** A disqualified judge shall not participate in any proceedings with reference to the matter from which the judge is disqualified.

Rule 6. Grounds for Discipline

- (a) **In general.** Grounds for judicial discipline shall include:
 - (1) Willful misconduct in office, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;
 - (2) Willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties;
 - (3) Intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotic or dangerous drug;
 - (4) Any conduct that constitutes a violation of the Code of Judicial Conduct, as amended, or the American Bar Association's Model Rules of Professional Conduct (as adopted pursuant to Com. Disc. R. 2(a)); or
 - (5) Disability interfering with the performance of judicial duties, which is, or is likely to become, of a permanent character.
- (b) **Failure to cooperate.** Failure or refusal of a judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.
- (c) **Misconduct Distinguished from Error.** In the absence of fraud, corrupt motive, bad faith, or any of the above grounds, the investigative Judge and Supreme Court shall not take action against a subject judge for making erroneous findings of fact or legal conclusions which are subject to appellate review.

Rule 7. Immunity

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Any Judge or Justice, pro tempore Judge, and staff shall be absolutely immune from suit for all conduct in the course of their official duties as part of a judicial discipline investigation and proceeding, and no civil lawsuit predicated thereon may be instituted against any complainant or witness, subject to Rule 8(C).

Rule 8. Right to Counsel

The subject judge shall be entitled to retain counsel and to have the assistance of counsel at every stage of these proceedings.

Rule 9. Confidentiality, Privilege and Oath

- (a) **Proceedings confidential.** All papers and pleadings filed with and proceedings before the judiciary or its pro tempore judges shall be confidential. Only if and when a notice of formal proceedings is filed with the Supreme Court by the investigating Judge recommending a formal hearing on the issues of temporary removal or discipline do the proceedings lose their confidential character.
- (b) **Privileged material.** The filing of papers with, or giving of testimony before the investigating Judge or Supreme Court regarding a matter of judicial discipline shall be considered privileged communications and cannot be the subject of any legal action, including a defamation claim, against a participant in a disciplinary proceeding. A writing which was privileged prior to its filing does not lose its privilege by the filing. A record filed by the investigating Judge in the Supreme Court continues to be privileged.
- (c) **Loss of privilege as to complainant only.** If a complaint is false, and it was made with full knowledge that it was false, and it was made with spite, hatred, or ill will toward a subject judge, the complainant will lose the privilege accorded by these rules.
- (d) **Disclosure.** Confidential information concerning a judge may be released in the following circumstances:
 - (1) An inquiry is initiated as a result of conduct that is or becomes the subject of widespread public concern, to such an extent that the release of information concerning insufficient cause to proceed or a finding of no misconduct would benefit the judge and the public, and the judge signs a waiver for this purpose;
 - (2) A government agency, nominating commission, or agency authorized to investigate for purposes of admission to a state bar requests information concerning the appointment of a judge or former judge to another judicial position, and the judge signs a waiver for this purpose;

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- (3) The Chief Justice of the Supreme Court requests information pertaining to the appointment or assignment of a retired judge to judicial duties;
- (4) A new complaint is being investigated and there is a closed file on a previous complaint: in this case, the closed file shall be released to the investigating Judge.
- (e) **Oath of witnesses.** Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt, punishable by monetary fine or jail time.

Rule 10. Medical Examination and Waiver of Privilege

- (a) **Medical examination.** When a complaint is received alleging, or where an initial inquiry or preliminary investigation reveals, that the subject judge is or may be incapacitated by reasons of a disability, and the investigating Judge finds good cause to do so, the investigating Judge may order the subject judge to undergo any physical or mental examinations the investigating Judge deems necessary to proceed with the investigation. The report of the medical practitioner shall be furnished to the investigating Judge and the subject judge.
- (b) **Waivers.** The investigating Judge may draft waivers and releases which are necessary to authorize receipt of all medical records, reports, and information from any medical person, medical institution, or other facility regarding the subject judge's physical or mental condition.
- (c) **Effect of denial.** If the complaint involves the physical or mental condition of the subject judge, a denial of the alleged condition shall constitute a waiver of any privilege the subject judge may have that would preclude the discovery of medical records or the requirement of a physical or mental examination related to the allegations of the complaint.

Rule 11. Service

- (a) **Service on subject judge.** All papers in disciplinary proceedings may be served on the subject judge in person or hand delivered to his or her chambers with a certificate of service. If counsel has appeared for the subject judge, all papers may be served on counsel in lieu of service upon the subject judge.
- (b) **Service on investigating Judge.** Service of papers on the investigating Judge shall be given by delivering or mailing the papers to the investigating Judge's chambers or office.

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- (c) **Exception to Internet Filing.** In a judicial disciplinary proceeding, documents will be hand filed with the Supreme Court Clerk who will keep a file separate from other Supreme Court files in a sealed file drawer.

Rule 12. Complaint

- (a) **Filing a complaint.** Any person or organization may file a complaint against a judge. The complaint shall be in written form.
- (b) **Screening of complaints.** The investigating Judge shall determine by examination of the complaint or by initial inquiry whether a complaint warrants further investigation and evaluation. Complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the court may be dismissed immediately by the investigating Judge with notice to the Supreme Court panel.

Rule 13. Initial Inquiry

- (a) **Upon receipt.** Upon receipt of a complaint, report or other information as to conduct that might constitute grounds for discipline or temporary removal, the investigating Judge may conduct a prompt, discreet, and confidential initial inquiry and evaluation.
- (b) **Response from Subject Judge.** As part of an initial inquiry, the investigating Judge may require a subject judge to submit, in writing, an explanation and disclosure of all pertinent facts, including germane documents, in answer to a request by the investigating Judge. The judge's answer shall be made within ten (10) days of receipt of said request. The request to the subject judge for an explanation shall be made by written communication.
- (c) **Immediate Dismissal if warranted.** Upon determination that there is insufficient cause to proceed, the investigating Judge shall dispose of the case and the complainant shall be notified of the investigating Judge's action. If the subject judge has been informed of the proceeding, he or she shall also be notified of the investigating Judge's action.

Rule 14. Preliminary Investigation

- (a) **Upon receipt of complaint.** The investigating Judge, upon receiving a complaint not obviously unfounded or frivolous, alleging facts indicating discipline may be warranted under Rule 6A, may make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held at the Supreme Court.

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- (b) **On own motion.** When the Chief Justice receives information, not in the form of a verified statement, which may subject a judge to disciplinary action, a preliminary investigation may be authorized. In this case, the order appointing the investigating Judge which summarizes the information shall be included in the file.

Rule 15. Notice of Preliminary Investigation

The subject judge shall be notified of an investigation by a notice of preliminary investigation, setting forth the nature of the complaint and the name of the person making the complaint, if any. The notice may consist of the order by the Supreme Court appointing the investigating Judge with any relevant attachments. The subject judge shall respond, in writing, to the notice of preliminary investigation within fifteen (15) days of service.

Rule 16. Confidentiality of Preliminary Investigation

The preliminary investigation shall be kept confidential. All witnesses shall take an oath to keep the matter confidential, with the penalty for disobedience being contempt.

Rule 17. Standard for Preliminary Investigation

The investigating judge shall determine whether there is reasonable cause to submit the complaint to the Supreme Court for a formal hearing. If the complaint, if true on its face, would not constitute misconduct or incapacity, the investigating judge shall dismiss the complaint. If the information raises allegations that would constitute judicial misconduct or incapacity if true, the investigating judge shall submit recommendations to the Supreme Court, called a notice of formal proceedings.

Rule 18. Investigating Judge's Notice of Formal Proceedings

- (a) **Filing.** Upon making a determination recommending a hearing on the issues of discipline or temporary removal of a subject judge, the investigating Judge shall promptly file with the clerk of the Supreme Court an original copy of recommendations, findings, and conclusions. The notice shall state the laws, canons and rules allegedly violated pursuant to Rule 6 and the alleged facts upon which such charges are based in ordinary and concise language. The notice shall also be served on the subject judge by personal service or left with his chambers with a certificate of service.
- (b) **Content.** After a full investigation, the investigating judge may recommend any of the following take place:
- (1) Dismissal of the complaint;
 - (2) Private admonition or deferred discipline agreement, which must be consented to by the subject judge;
 - (3) Filing of formal charges;

- (4) Filing of a petition to transfer to incapacitated/inactive status;
 - (5) Referral to an appropriate agency.
- (c) **Filing of transcript and costs.** Within a reasonable time after filing of the recommendation, the investigating Judge shall file with the clerk of the Supreme Court any transcripts, evidence and a memorandum of costs of service of process, witness fees and expenses, mileage, depositions and investigation expenses.

Rule 19. Investigating Judge's Representation Before the Supreme Court

Following the submission of any formal report to the Supreme Court of a recommendation of discipline or temporary removal, the investigating Judge may designate or retain counsel, which will be reimbursed by the Superior Court, to represent the investigating Judge in any hearings or matters before the Supreme Court involving matters recommended by the investigating Judge. This Rule is merely for the purpose of required appearances or testimony before the Supreme Court for a formal hearing and does not affect Rule 6 which provides for absolute immunity.

Rule 20. Proceedings Against a Justice of the Supreme Court

If the proceeding is against a Justice of the Supreme Court, a Justice not named in the complaint will assign a three member panel pro tempore to hear the disciplinary complaint.

Rule 21. Standard of Proof

- (a) **Clear and Convincing.** Formal charges shall be established at a hearing before the Supreme Court by clear and convincing evidence.
- (b) **Burden on inactive judge.** The subject judge shall have the burden of proof if he or she is seeking a transfer from inactive status after a previous imposition of discipline.

Rule 22. Answer

- (a) **Time to file.** Within fifteen (15) days after service of the notice of formal proceedings, the subject judge shall file with the Supreme Court legible answer which shall be verified.
- (b) **Failure to answer.** The facts alleged in the notice of formal proceedings may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time, in which event the sole issue to be determined shall be the nature of the investigating Judge's recommendation of discipline after consideration of any facts in aggravation or mitigation of the respondent's fault.

Rule 23. Prehearing Motions

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All prehearing motions shall be submitted at least fifteen (15) days prior to a scheduled hearing, unless, upon good cause shown, the Supreme Court waives the time requirement.

Rule 24. Hearing

The Supreme Court shall set a time for the hearing, and shall give notice of such hearing to the subject judge at least ten (10) days prior to the date set, which shall be at least twenty-five (25) days after service of notice of formal proceedings.

Rule 25. Notice to the CNMI Bar Ethics Committee

The CNMI Bar Ethics Committee shall be served with notice of the hearing, and may file its own recommendations for imposing lawyer disciplinary sanctions on the subject judge, a copy of which shall be served on the subject judge or his or her counsel, if applicable.

Rule 26. Prosecution

The Supreme Court may appoint a member of the bar to prosecute the disciplinary matter before it.

Rule 27. Evidence at Hearing

- (a) **Admissible evidence.** At a hearing before the Supreme Court, only evidence admissible under the rules of evidence shall be received, and oral evidence shall be taken only on oath or affirmation.
- (b) **Depositions; use as evidence.** Depositions, either by oral examination or by written interrogatories, of witnesses who reside off island or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the Supreme Court. Such order may be made on stipulation of the parties or after hearing on five (5) days' notice.
- (c) **Use of "closed file."**
 - (1) A "closed file" is one involving a prior official complaint filed with the Court.
 - (2) A closed file may be used to establish a course of conduct or pattern of violations by a subject judge or in making a recommendation for discipline to the Supreme Court.
 - (3) When the investigating Judge intends to use a closed file, the subject judge shall have notice. The subject judge will have an opportunity to be heard on the closed file. If no investigation was undertaken or charges were not brought regarding the allegations contained in the closed file, it may be reopened and handled as if it had just been initiated.

Rule 28. Conduct of Hearing

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- (a) **Open hearing.** The hearing shall be open to the public.
- (b) **Proceeding despite absence of answer or appearance.** At the time and place set for the hearing, the Supreme Court shall proceed with the hearing whether or not the subject judge has filed an answer or appears at the hearing.
- (c) **Proceeding despite failure to appear or comply.** The appointed prosecutor may present the case in support of the charges set forth in the notice of formal proceedings. The failure of the subject judge to appear at the hearing, after timely filing an answer specifically denying the facts alleged in the notice of formal proceedings, may be taken as an admission of the truth of the facts alleged to constitute grounds for discipline or temporary removal. The Supreme Court may refuse to receive testimony of the subject judge who, having failed without good cause to file a timely answer, appears at the hearing. The failure of the subject judge to testify on his or her own behalf may be considered against him or her, unless it appears that such failure was in the exercise of a constitutional privilege or due to circumstances beyond his or her control.

Rule 29. Procedural Rights of Judges

- (a) **Evidence; counsel; witnesses.** A respondent subject judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.
- (b) **Transcript of testimony.** When a transcript of the testimony has been prepared, a copy thereof shall, upon request, be available for use by the subject judge and his counsel in connection with the proceedings, or the subject judge may arrange to procure a copy at his or her expense. The subject judge shall have the right, without any order or approval, to have all or any testimony in the proceedings transcribed at his or her expense.
- (c) **Incompetency.** If the subject judge is adjudged incompetent, or if it appears at any time during the proceedings that he or she is not competent to act on his or her own behalf, the Supreme Court shall appoint a guardian *ad litem* unless the subject judge already has a guardian who will represent him or her. In the appointment of such guardian *ad litem*, consideration shall be given to the wishes of the subject judge's immediate family. The guardian or guardian *ad litem* may claim and exercise any right or privilege and make any defense for the subject judge with the same force and effect as if claimed, exercised, or made by the subject judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to

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the subject judge, such notice or matter shall also be served, given or sent to the guardian or guardian *ad litem*.

- (d) **Discovery.** A respondent subject judge and the prosecutor, if any, shall exercise due diligence to obtain any needed discovery on their own. Any desired discovery that cannot be exchanged by stipulation and that cannot be obtained through the parties' own efforts may then be requested through a motion to compel discovery.

Rule 30. Amendments to Notice or Answer

The Supreme Court, at any time prior to the conclusion of the hearing, or the investigating Judge, at any time prior to a final determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the subject judge shall be given a reasonable time both to answer the amendment and to prepare and present a defense against the additional matters charged.

Rule 31. Record of Proceedings

A record of the formal hearing shall be kept as any other hearing before the Supreme Court.

Rule 32. Emergency Interim Suspension

- (a) **Suspension based on general public harm by petition.** Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the investigative Judge may, upon a determination that the continued service of a subject judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the subject judge's conduct appears to be violative of the Code of Judicial Conduct or the constitution of the CNMI, petition the Supreme Court for injunctive or other appropriate interim relief, including temporary suspension of the judge with pay.
- (b) **Suspension based on criminal prosecution.** Without the necessity of disciplinary action or a petition, the Supreme Court of the Northern Mariana Islands may immediately place a judge on interim suspension, with pay, upon notice of the filing of an indictment, information or complaint in any jurisdiction charging the judge with a "serious crime." A "serious crime" is:
- (i) any felony;

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- (ii) a lesser crime that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects; or
 - (iii) any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy or solicitation of another to commit a "serious crime."
- (c) **Suspension based on other misconduct.** Upon receipt of sufficient evidence demonstrating that a judge poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court of the Northern Mariana Islands may suspend the judge, with pay, pending a final determination in any proceeding under these rules.
- (d) **Suspension from participation in Supreme Court cases.** Without the necessity of disciplinary action or a petition, the Supreme Court may immediately remove any judge from sitting pro tem as a Supreme Court Justice.
- (e) **Motion for Reconsideration.** A suspended judge may apply to the Supreme Court of the Northern Mariana Islands for reconsideration of the suspension order.
- (f) **Effect of suspension on disciplinary proceeding.** Interim suspension of a judge shall not preclude action by the investigative judge or the Supreme Court on the same conduct that was the basis for the criminal charge. Acquittal, dismissal or conviction of the criminal charge shall not preclude proceedings by the Supreme Court on the conduct that was the basis for the charge.

Rule 33. Dispositions

The Supreme Court may make any of the following dispositions:

- (a) Dismissal of complaint;
- (b) Privately informing the judge that his conduct may be violative of the standards of judicial conduct;
- (c) Proposing professional counseling or assistance for the judge; or
- (d) Order of sanctions.

Rule 34. Sanctions

Following a formal hearing or based on admissions by a subject judge, the Supreme Court may order one or all of the following formal sanctions:

- (a) Suspension;
- (b) Imposition of limitations or conditions on the performance of judicial duties;
- (c) Public reprimand or censure;
- (d) Monetary fine;
- (e) Assessment of costs and expenses.

Rule 35. Impeachment

A judge is subject to the impeachment provisions of Article IV, Section 7 and Article II, Section 8, of the NMI Constitution.

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