

made for the exchange of judges between circuits under certain circumstances. Following those provisions, the presiding judge of one circuit, who had a personal interest in a case and thus was disqualified, selected the judge with whom he would exchange circuits. This was held to be error, for such selection constituted an act of discretion in a matter in which he would be personally affected, rather than a purely administrative act.

In view of all of the foregoing, it is my opinion that the actions of Chief Justice Burnett in reassigning the case from Judge Abbate to Justice Hefner with no explanation for doing so being placed in the record properly require a reversal. Hence I must respectfully dissent.

BENJAMIN M. ABRAMS, Plaintiff-Appellant

v.

**TRUST TERRITORY HIGH COURT DISCIPLINARY PANEL,
Defendant-Appellee**

Civil Appeal No. 203

Appellate Division of the High Court

Northern Mariana Islands

May 19, 1977

Following disciplinary action against attorney by panel of High Court Justices, attorney filed for declaratory judgment and injunctive relief in the Trial Division of the High Court, which dismissed for lack of jurisdiction. Attorney appealed. The Appellate Division of the High Court held that disciplinary panel was acting as the Appellate Division, not as an administrative body which could not legally perform a judicial function and discipline attorney, and that there was no appeal from the panel's decision, and dismissed the appeal.

1. Attorney and Client—Disciplinary Proceedings—High Court

Under statute providing that "the High Court may admit qualified persons as attorneys at law to practice in all courts of the Trust Territory and may for cause discipline them" the High Court has the power and authority to discipline attorneys. (5 TTC § 2(2))

2. Attorney and Client—Disciplinary Proceedings—High Court

The High Court has inherent power to discipline attorneys.

3. Attorney and Client—Regulation of Attorneys—High Court

High Court has an obligation and duty to regulate attorneys practicing within its jurisdiction.

4. Attorney and Client—Disciplinary Proceedings—High Court

High Court's power to admit and discipline attorneys rests with its highest division, the Appellate Division. (5 TTC § 2(2))

5. Attorney and Client—Disciplinary Proceedings—High Court

Implicit in High Court's power to admit and discipline attorneys is the authority to adopt procedures for carrying out that power.

6. Attorney and Client—Disciplinary Proceedings—Nature and Purpose

Disciplinary proceedings against an attorney are not civil or criminal, but rather, are special proceedings, sui generis, in the nature of an inquiry concerning an attorney's conduct as it relates to his fitness to practice; and the purpose of the proceedings is not punishment, but rather, protection of the court and public from persons unfit to practice a profession imbued with public trust. (5 TTC § 2(2))

7. Attorney and Client—Disciplinary Proceedings—Due Process and Equal Protection

An attorney undergoing disciplinary proceedings is entitled to procedural due process.

8. Attorney and Client—Disciplinary Proceedings—High Court

Disciplinary panel before which attorney appeared, composed of Chief Justice of the High Court and two associate justices of that court, was acting as the Appellate Division of the High Court, not in an administrative capacity, when it disciplined attorney; therefore, it could not be said that the panel was an administrative body illegally exercising a judicial function. (5 TTC § 2(2))

9. Appeal and Error—Right to Appeal

Procedural due process does not require appellate review.

10. Judgments—Finality of Decisions

The decisions of the Appellate Division of the High Court are final.

11. Attorney and Client—Disciplinary Proceedings—Appeals

There was no provision for or right to appeal from decision of disciplinary panel of Appellate Division of High Court, which disciplined attorney, and appeal to Appellate Division would be dismissed. (5 TTC § 2(2))

BURNETT, *Chief Justice*, BROWN, *Associate Justice*,
HEFNER, *Associate Justice*, WILLIAMS, *Associate Justice*

This matter has been filed as an appeal from a decision of the Trial Division in Northern Mariana Islands Civil Action No. 54-77, dismissing Plaintiff's cause of action for lack of jurisdiction.

Although we believe this appeal could be summarily dismissed by a single judge for lack of jurisdiction of the subject matter pursuant to 5 TTC § 52, the unusual nature of the case warrants some discussion and final resolution by all of the regularly appointed judges of the High Court.

A brief history of this case is necessary to place the present status of the case in proper perspective. Initially, proceedings were instituted against the appellant in accordance with the Disciplinary Rules and Procedures for Attorneys Practicing in the Trust Territory for alleged violations of the Code of Professional Responsibility. After a hearing before a Disciplinary Panel of three judges of the Appellate Division of the High Court in accordance with said rules, the Court entered the following findings, conclusions and order:

The Disciplinary Panel, pursuant to Rule 9(g) of the Disciplinary Rules of the Trust Territory, hereby makes the following findings of fact:

1. Respondent Attorney (sometimes hereafter referred to as Mr. Abrams) represented three defendants; namely, Monu, Sanchiro and Arakuchy in Truk Criminal Case No. 13-75.

2. One or two days before the trial, Mr. Abrams learned that three witnesses; namely, Rapun, Sakusi and Frieden had previously given written statements to the Government which incriminated the clients of Mr. Abrams.

3. The three witnesses were to be Government witnesses against the three clients of Mr. Abrams and the latter knew this.

4. All three witnesses were approached by Mr. Abrams, or persons at his direction, and the three witnesses conferred with Mr. Abrams.

5. Prior to conferring with the three witnesses, Mr. Abrams was informed by the District Attorney that he would not prosecute the three witnesses in exchange for their testimony.

6. Mr. Abrams advised the three witnesses that their statements and testimony may incriminate them, and they had a right to remain silent.

7. Sakusi and Rapun asked Mr. Abrams to represent them at the trial of Criminal Case 13-75.

8. Frieden did not request or ever indicated to Mr. Abrams that he wanted Mr. Abrams to represent him, and Mr. Abrams did not represent Frieden at any time.

9. In the course of the criminal trial, Mr. Abrams represented to the Court that he was the attorney for Frieden.

10. Upon the advice of Mr. Abrams, Rapun and Sakusi refused to testify against the three clients of Mr. Abrams.

11. Subsequent to the trial, on October 15, 1975, the District Attorney filed an information against Rapun and Sakusi.

12. Prior to the date set for trial for Rapun and Sakusi, Mr. Abrams filed a Motion to Withdraw as counsel.

13. Sakusi was convicted of the offense charged in the information. The charge against Rapun was dismissed.

14. Mr. Abrams did not appear or represent Sakusi and Rapun at their hearing in July of 1976.

Based on the foregoing facts, the Disciplinary Panel concludes as follows:

1. Mr. Abrams violated DR 5-105 of the Code of Professional Responsibility, American Bar Association, and Rule 2(h) of the Trust Territory Disciplinary Rules, in

that he represented multiple clients which adversely affected his clients Rapun and Sakusi.

2. Mr. Abrams violated DR 2-103(A), Code of Professional Responsibility, American Bar Association, and Rule 2(h) of the Trust Territory Disciplinary Rules, in that he recommended employment of himself to Frieden.

3. Mr. Abrams violated DR 7-102(A)(5), Code of Professional Responsibility, American Bar Association, and Rules 2(h) and 2(d), Trust Territory Disciplinary Rules, in that he knowingly made a false statement of fact to wit: Mr. Abrams stated in open court to opposing counsel and to the Court that he represented Frieden when, in fact, he did not represent him.

4. Mr. Abrams violated his Oath of Admission to Practice in the Trust Territory of the Pacific Islands in that the express purpose and design of the action of Mr. Abrams was to deceive and mislead the Court and to counsel an unjust cause. Mr. Abrams performed these violations by attempting to avoid the conviction of his three original clients by representing potential adverse witnesses against his clients and to silence them knowing that by doing so he would subject them to prosecution for crimes which he had every reason to believe would not have occurred had he not advised them to remain silent. Mr. Abrams was willing to and did sacrifice his witness-clients for the sole purpose of trying to avoid the conviction of his three clients in Criminal Case No. 13-75. After the first trial was over and the second trial of the witnesses was approaching, Mr. Abrams filed his Motion to Withdraw as counsel and abandoned Rapun and Sakusi as he no longer needed their cooperation.

Disciplinary Action

The Disciplinary Panel is confronted with a situation in which Respondent Attorney did not see a patent and

obvious conflict of interest, and his testimony at the hearing of this matter was startling to the extent that he still sees no conflict or anything improper in what he did. This gives great concern to the Panel in that the Respondent Attorney perhaps has never fully understood his obligations as an attorney and the ethical rules he must comply with. Whether this proceeding and the discipline imposed will educate the Respondent Attorney remains to be seen.

It is Ordered that Benjamin M. Abrams is suspended from the practice of law for three (3) years; that execution of such suspension be stayed and that he be placed on probation for that period upon the following conditions:

1. Within ten (10) days after the effective date of this Order, Mr. Abrams shall file with this court an affidavit showing that he has mailed or delivered a copy of this Order to all other state, territorial, federal and administrative jurisdiction to which he is admitted to practice.

2. Upon notice to Mr. Abrams, he shall take and pass an examination concerning professional ethics and responsibilities as prescribed by the Chief Justice.

This Order shall be effective thirty (30) days from this date.

Subsequent to the decision in the disciplinary proceedings, Appellant filed Civil Action No. 54-77 requesting a Declaratory Judgment and Injunctive Relief in the Trial Division of the High Court. The principal basis of Appellant's action as set forth in his complaint is as follows:

* * *

6. Defendant Disciplinary Panel could not lawfully enter such an Order affecting the rights of plaintiff in that the Disciplinary Panel was not formed pursuant to any legal authority. Specifically, 5 TTC § 2(2) does not provide for adoption or promulgation of any rules or procedures governing the practice of law in the Trust Territory.

7. Said Order in Disciplinary Case No. 1-76 was entered by the Appellate Division of the High Court, the jurisdiction of which was never invoked during the proceedings in Disciplinary Case No. 1-76 and lacked subject matter jurisdiction to affect the rights of Mr. Abrams.

8. Said Order entered by the Disciplinary Panel is further defective, erroneous, and contrary to law in that it was based on a hearing during which witnesses testified against Mr. Abrams whose presence at the hearing was facilitated at Government expense whereas Mr. Abrams was not so provided with witnesses despite his timely request, all in violation of Mr. Abrams' rights under the United States Constitution, the Trusteeship Agreement, and 1 TTC § 4, to due process of law and equal protection of the law.

9. Said Order entered by defendant Disciplinary Panel is additionally defective, erroneous, and contrary to law, in that it contains incorrect findings and conclusions of law and fact to the effect that Mr. Abrams represented clients with conflicting interests.

10. Said Order entered by defendant Disciplinary Panel is additionally defective, erroneous, and contrary to law, in that it concludes that Mr. Abrams recommended his employment to Frieden. This conclusion is contrary to the great weight of the evidence in the proceedings before the Disciplinary Panel and constitutes an abuse of fact finding discretion. Such abuse violates plaintiff's rights under the United States Constitution, the Trusteeship Agreement, and 1 TTC § 4 to due process of law.

* * *

When Appellant's action was filed in the Trial Division, the matter could have justifiably been dismissed by the then Acting Chief Justice for lack of jurisdiction and as a frivolous cause of action, but since he was a member of the original disciplinary panel he chose to refer the matter to another judge. After a hearing, the trial court recognized the substance of the cause of Appellant's action as being a request to the Trial Division of the High Court to enjoin a determination of the Appellate Division and stated from the bench:

* * *

The determination of the findings made by the Appellate Division of the Court in disciplining the plaintiff is not appealable. The Trial Division of the High Court of the Trust Territory has no jurisdiction to set aside or restrain an Order issued by the Appellate Division of the High Court of the Trust Territory.

* * *

[1] There is no question that the High Court has the power and authority to discipline attorneys. First, the Code of the Trust Territory specifically confirms the Court's authority in 5 TTC § 2(2) which reads as follows:

The High Court may admit qualified persons as attorneys at law to practice in all courts of the Trust Territory and may for cause discipline them.

[2] In addition to the statute, the Court has the inherent power to discipline attorneys. The authority to discipline is correlated to the power to admit. *In Re Mackay*, 416 P.2d 823, 837 (Alaska 1964). It is well accepted this power falls upon the highest court of a state, generally the Supreme Court. *Brown v. Supreme Court of Virginia*, 359 F.Supp. 549, 553 (D.C. Va. 1973), affirmed in *Brown v. Supreme Court of Virginia*, 94 S.Ct. 534, 414 U.S. 1034, 38 L.Ed.2d 327, and in *Titus v. Supreme Court of Virginia*, 94 S.Ct. 533, 414 U.S. 1034, 38 L.Ed.2d 327, rehearing denied 94 S.Ct. 886, 414 U.S. 1138, 38 L.Ed.2d 764; *Application of Huston*, 378 P.2d 644, 645 (Alaska 1963); *In Re Sullivan*, 170 P.2d 614, 615 (Ariz. 1946); *People v. Radinsky*, 490 P.2d 951, 952 (Colo. 1971); *In Re Ratner*, 399 P.2d 865, 867 (Kan. 1965); *In Re Watson*, 286 P.2d 254, 255 (Nev. 1955); *Jenkins v. Oregon State Bar*, 405 P.2d 525, 526 (Ore. 1965); *Ruckenbrod v. Mullins*, 133 P.2d 325, 330 (Utah 1943).

[3] The courts not only have the inherent power to discipline attorneys, but they are also charged with an obligation and duty to regulate attorneys practicing within their jurisdiction. *In Re Echeles*, 430 F.2d 347 (7th Cir.

1970); *Saier v. State Bar of Michigan*, 293 F.2d 756 (6th Cir. 1961); *People v. Radinsky*, 490 P.2d 951, 952 (Colo. 1971); *In Re Carvelo's Petition*, 352 P.2d 616, 623, 624 (Hawaii 1959).

[4] Since the High Court consists of two divisions, the Appellate Division and the Trial Division as set forth in 5 TTC § 52, and to insure uniform standard of admission and disciplinary procedures, we concluded the power to admit and discipline attorneys should rest with the highest court of the Trust Territory, i.e. the Appellate Division.

[5] Implicit in the power of the court to admit and discipline attorneys is the authority to adopt procedures for carrying out its obligations. *In Re Hallinan*, 272 P.2d 768, 775 (Cal. 1954). Accordingly, the rules of admission and the disciplinary rules were promulgated by at least three of the justices of this court sitting as the Appellate Division pursuant to 5 TTC § 52.

[6, 7] Disciplinary proceedings are not considered criminal or civil in nature but are special proceedings, sui generis, in the nature of an inquiry concerning the conduct of an attorney as it relates to his fitness to practice law. Such proceedings are not for the purpose of punishment of the attorney but to protect the Court and the public from persons unfit to practice a profession imbued with public trust. Although such proceedings are sui generis, the Respondent Attorney is entitled to procedural due process, i.e. notice of the charges and an opportunity to be heard. *In Re Echeles*, 430 F.2d 347, 350 (7th Cir. 1970).

Rule 9 of the Disciplinary Rules of Procedure for Attorneys Practicing in the Trust Territory clearly complies with the procedural due process requirements as follows:

Rule 9. HEARING

(a) Complaint: Formal disciplinary proceedings before the disciplinary panel shall be instituted by the filing of a disciplinary

complaint which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. A copy of the complaint shall be served upon the respondent.

(b) Answer: The respondent shall serve his answer upon the disciplinary counsel and file the original with the panel within twenty (20) days after service of the complaint, unless such time is extended by the panel. In the event the respondent fails to answer, the charges shall be deemed admitted.

(c) Date of Hearing: The disciplinary panel shall cause notice of the time and place of the hearing to be given to the respondent attorney at least ten (10) days prior thereto. The hearing will be conducted not earlier than thirty (30) days or later than ninety (90) days after service of the complaint, unless delayed for good cause.

(d) Where Held: All disciplinary hearings shall be held in the Trust Territory at such place as may be directed by the disciplinary panel.

(e) Public Excluded from Hearing: Unless a public hearing is requested in writing by the respondent attorney at least five (5) days prior to the hearing, the hearing of a disciplinary matter before the panel shall not be public.

(f) Procedure: At every hearing respondent shall have full opportunity to cross-examine all witnesses presented by the disciplinary counsel and to present witnesses on his own behalf. The hearing panel shall not be bound by the formal Rules of Evidence, but it shall admit only trustworthy evidence.

(g) Findings and Conclusions: Within twenty (20) days after the hearing, the disciplinary panel shall enter its findings and the disciplinary action to be taken.

[8] Since the Disciplinary Rules do not specifically refer to the Appellate Division, Appellant attempts to characterize the acts of the Disciplinary Panel as administrative in nature, and such a characterization is wholly without merit.

It is well accepted that the discipline of attorneys is a judicial function of the courts. *Saier v. State Bar of Michigan*, 293 F.2d 756, 760 (6th Cir. 1961); *Mackay v. Nesbett*, 285 F.Supp. 498, 502 (D.C. Alaska 1968); *Ford v.*

Board of Tax Roll Corrections, 431 P.2d 423, 428 (Okla. 1967).

The trial court properly recognized the frivolous nature of Plaintiff's contention on this issue when the Court, in its oral order dismissing the case, stated:

* * *

Now, the basic issue here has to do with the constitution of the so-called Disciplinary Panel of the Court. It has been contended by the Plaintiff that the said Panel was not duly constituted and has no basis in law; that it has no power to sustain or disbar an attorney because it is an administrative agency or body exercising a judicial function. The panel consisted of—the panel which handled this proceeding—was the Chief Justice of the Trust Territory High Court and two Associate Justices of the High Court of the Trust Territory. In doing so they are acting in their judicial capacity. They are acting as a Court. The Chief Justice had every right to designate certain members of the High Court of the Trust Territory to sit in adjudication of a disciplinary proceedings involving an attorney. The nomenclature here is not important; it is the body as constituted and handling the proceedings. The membership, which is the main criteria to be adhered to and the composition of the so-called Disciplinary Panel of the Chief Justice and the Associate Justices of the Trust Territory—of the High Court, it is the opinion of this Court that said judges were really sitting as an Appellate Division of the Court despite the nomenclature given the said body.

* * *

[9] We recognize Appellant's right to procedural due process, however, procedural due process does not require appellate review. *National Union of Marine Cooks and Stewards v. Arnold*, 348 U.S. 37, 75 S.Ct. 92, 95, 99 L.Ed.2d 46 (1954). This principle has been specifically applied to disciplinary proceedings in *Javits v. Stevens*, 382 F.Supp. 131, 140 (D.C. N.Y. 1974). No appellate review is provided in the Disciplinary Rules and none was intended by this Court.

[10, 11] Appellant has been afforded a full adversary hearing before a disciplinary panel in the Appellate Division of the High Court. The Appellate Division of the High Court is the highest court of the Trust Territory and its decisions are final. 6 TTC § 357.

Since the original hearing was in the Appellate Division from which there is no appeal, there has been no "lower court" decision within the terms of 5 TTC § 351 which would preclude our dismissing this matter for lack of jurisdiction. Therefore, this appeal is hereby dismissed.

ORDER OF SUSPENSION

Pursuant to the Order issued on February 14, 1977, the suspension of Benjamin M. Abrams was stayed upon the following conditions:

1. Within ten (10) days after the effective date of this Order, Mr. Abrams shall file with this court an affidavit showing that he has mailed or delivered a copy of this Order to all other state, territorial, federal and administrative jurisdiction to which he is admitted to practice.

2. Upon notice to Mr. Abrams, he shall take and pass an examination concerning professional ethics and responsibilities as prescribed by the Chief Justice.

More than ten (10) days have expired from the effective date of the Order and Benjamin M. Abrams has failed to file the affidavit required in No. 1 above.

On April 13, 1977 Benjamin M. Abrams was notified in writing that he was to take the examination required in No. 2 above on or before the end of April 1977. Benjamin M. Abrams has failed to take such examination.

It is found that Benjamin M. Abrams has failed to comply with the conditions specified above, and good cause appearing,

IT IS ORDERED, that the stay of execution is dissolved and Benjamin M. Abrams is hereby suspended from the

practice of law for three (3) years from this date. Benjamin M. Abrams shall promptly comply with Rule 16 of the Disciplinary Rules for Attorneys Practicing in the Trust Territory.

IT IS FURTHER ORDERED, that if Benjamin M. Abrams has not filed the affidavits required in Rule 16(d) within ten (10) days from this date, copies of this Order shall be sent to all jurisdiction where Benjamin M. Abrams is known to be admitted.

TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee

v.

RILEY ALBERTTAR, Defendant-Appellant

Criminal Appeal No. 62

Appellate Division of the High Court

Marshall Islands District

May 20, 1977

Appeal claiming that information charging involuntary manslaughter was defective in that it did not contain sufficient allegations of fact to permit preparation of a defense. The Appellate Division of the High Court, Burnett, Chief Justice, reversed and remanded with directions to dismiss, subject to such permission to amend as the court deemed proper.

Criminal Law—Information—Sufficiency

Prosecution's confession of error and request for remand, in answer to appeal claiming that information charging involuntary manslaughter was defective in that it did not contain sufficient allegations of fact to permit preparation of a defense, was not binding on Appellate Division, but reversal and remand would be granted where it was concluded that the information was in fact defective.

BURNETT, *Chief Justice*, BROWN, *Associate Justice* and
WILLIAMS, *Associate Justice*.