

1 **I. Factual and Procedural History.**

2 Brooks moved to Guam in 1968 and was admitted to practice law on Guam in 1971. On
3 March 5, 1996, Brooks and the Guam Bar Ethics Committee entered into a Petition and
4 Stipulation for Discipline by Consent. Brooks agreed to resign from practicing law on April 15,
5 1996, and further agreed that he would not file for readmission to the Bar until March 5, 1999.
6

7 On May 16, 2003, Brooks filed an application for permission to apply for reinstatement
8 to the Guam Bar. On July 28, 2003, this court denied that application without prejudice because
9 Brooks had not successfully passed the Multistate Professional Responsibility Examination
10 (“MPRE”).
11

12 On March 13, 2004, Brooks established that he had successfully passed the MPRE.
13 Brooks then filed an application for permission to apply for reinstatement on April 21, 2004.
14 This court referred the matter to the Committee for review on April 26, 2004. The Committee
15 held an evidentiary hearing on Brooks’ application for reinstatement on September 24, 2004.
16

17 On December 16, 2004, the Committee submitted its recommendations to this court along
18 with the Report of Hearing Counsel. The Committee recommends that Brooks be reinstated to
19 the Guam Bar and authorized to practice law on Guam, subject to certain conditions, based on a
20 review of the findings and conclusions of the Report of Hearing Counsel. The Report of
21 Hearing Counsel made the following findings:
22

23 In the fall of 1991, Brooks became aware that the representatives of a corporate client
24 were either incarcerated or fugitives outside of the United States. Report of Hearing Counsel, p.
25 7. From October 8, 1991 through July 1992, Brooks withdrew \$300,000.00 from bank accounts
26 held in that client’s name and used the money to complete the construction of a home. *Id.*
27
28

1 In November 1992, a receiver was appointed to marshal the client's assets. *Id.* The
2 receiver hired Richard Johnson, *Esq.*, to investigate and locate the client's assets. *Id.* During an
3 interview with Mr. Johnson, Brooks lied and told Mr. Johnson that he was unaware of any
4 money or other assets of the client. *Id.* Brooks did not tell Mr. Johnson that he had withdrawn
5 the money from the client's accounts. *Id.* Mr. Johnson and his associate, Kelly Clark, *Esq.*,
6 continued the investigation throughout 1993, 1994 and 1995. *Id.* at 7-8.

8 In late 1995, Mr. Clark's investigation revealed that Mr. Brooks had withdrawn money
9 from the client's account and deposited it into Brooks' personal bank account. *Id.* at 8. Mr.
10 Clark tried to contact Brooks by telephone, but Brooks did not return his calls. *Id.*

12 In January 1996, Brooks met with the United States Attorney for Guam and made a full
13 disclosure of his theft.

14 On January 31, 1996, Brooks delivered a letter to the Committee describing his
15 misconduct and acknowledging that he had violated the Rules of Professional Conduct. Brooks
16 expressed remorse for his acts and apologized to all attorneys in good standing of the Guam Bar.
17 *Id.* On March 5, 1996, Brooks and the Committee entered into the stipulation for discipline by
18 consent. *Id.* at 9.

20 On April 12, 1996, Brooks waived indictment and plead guilty to an information
21 charging him with interstate transportation of stolen money in violation of 18 U.S.C. § 2314. *Id.*
22 On October 1, 1996, Brooks was sentenced to two (2) years of imprisonment. *Id.* Brooks was
23 also ordered to pay restitution in the amount of \$306,147.61 and fined \$4,000 and a special
24 assessment fee of \$50. *Id.* Brooks and his wife paid the restitution before the end of 1996. *Id.*

26 During his nineteen (19) months of imprisonment, Brooks devoted part of his time
27 assisting other inmates in legal matters. *Id.*

1 Brooks was released from prison on September 28, 1998. In November 1998, Brooks
2 began working as a paralegal for David J. Lujan. *Id.* at 10. Since January 2003, Brooks has been
3 working as a paralegal and law clerk for Lujan, Aguigui & Perez LLP. *Id.*
4

5 The incident that resulted in disbarment was Brooks' only known ethical violation. *Id.* at
6 11.

7 The Report of Hearing Counsel for the Guam Bar Ethics Committee noted that fourteen
8 (14) witnesses testified in favor of reinstating Brooks. *Id.* at 3. Additionally, sixteen (16) written
9 statements were submitted supporting Brooks' reinstatement. *Id.* Of the thirty (30) people who
10 testified and submitted written statements in favor of reinstating Brooks, fourteen (14) are
11 attorneys. *Id.* No witnesses or written statements opposed reinstating Brooks. *Id.*
12

13 On December 20, 2004, Brooks filed a Motion for Acceptance and Adoption of the
14 Report of the Guam Bar Ethics Committee as the Decision and Order and a memorandum in
15 support of that motion.
16

17 On December 27, 2004, this court ordered both Brooks and the Prosecuting Counsel for
18 the Guam Bar Ethics Committee to submit briefing on the issue of whether Title 7 GCA §
19 9113(d), which bars admission for applicants with a felony conviction, precludes reinstatement
20 in this case. The court held a hearing on Brooks' Motion for Acceptance on January 5, 2005.
21

22 **II. Discussion.**

23 The Committee has found that Mr. Brooks is rehabilitated, and recommends his
24 admission to the Guam Bar. The issue presented before the court concerns Brooks' eligibility for
25 readmission considering his conviction of interstate transportation of stolen money in violation
26 of 18 U.S.C. § 2314.
27
28

1 Section 9113, Appendix A, of Title 7 of the Guam Code Annotated governs the
2 qualifications for admission to the Guam Bar. Section 9113(d) provides:

3 A person is qualified for admission to the Bar of Guam who proves to the
4 satisfaction of the Board of Law Examiners:

5 . . .
6 (d) that he has not been convicted in any court of a felony or any crime involving
moral turpitude;

7 Title 7 GCA § 9113(d), Appendix A (1994)¹.

8 In its December 27, 2004 order, the court requested that the parties brief the issues of the
9 validity of section 9113(d), and the applicability of the provision in this case. Brooks and the
10 Committee both argue that section 9113 was repealed upon the adoption of the Supreme Court of
11 Guam's Rules Governing Admission to the Practice of Law. We disagree.
12

13 **A. Authority Over Admissions and Discipline.**

14 Through the Frank G. Lujan Memorial Court Reorganization Act of 1992, Public Law
15 ("P.L.") 21-147, effective January 14, 1993, the Guam Legislature transferred the authority over
16 bar admissions to the Supreme Court of Guam. Title 7 GCA § 3107(b), as amended by this Act,
17

18
19 ¹ Section § 9113 provides in full;

20 A person is qualified for admission to the Bar of Guam who proves to the satisfaction of
21 the Board of Law Examiners:

22 (a) that he has resided in Guam for not less than three (3) months preceding certification
and intends in good faith to practice in Guam;

23 (b) that he is at least eighteen (18) years of age;

24 (c) that he is of good moral character;

(d) that he has not been convicted in any court of a felony or any crime involving moral
turpitude;

(e) that he has completed at least two years of college;

25 (f) that he/she has graduated from a law school in the United States, its territories or
26 possessions, which is accredited by the American Bar Association or that he/she has previously
27 taken and passed one (1) or more parts of the Guam Bar Examination after graduating from a law
school not accredited by the American Bar Association but previously approved by the Judicial
Council. No correspondence law school may be so approved.

28 (g) that he has passed a final examination given by the Board of Law Examiners, which
examination shall be given at least twice each year.

Title 7 GCA § 9113 (1994) (Qualifications for Admission to Bar.)

1 provided: "The Supreme Court has appellate jurisdiction over attorney disciplinary matters and
2 supervisory jurisdiction over all inferior courts in Guam." Title 7 GCA § 3107(b) (Jan. 14,
3 1993). Section 3107(b) was later amended to give the Supreme Court "original and appellate
4 jurisdiction over attorney disciplinary matters including but not limited to admissions,
5 qualifications, and standards of practice; and supervisory jurisdiction over all inferior courts in
6 Guam and may make and promulgate rules governing the practice and procedure in the courts."
7 Title 7 GCA § 3107(b) (1994), *as amended by* Guam P.L. 27-31 (Oct. 31, 2003). The Frank G.
8 Lujan Memorial Act further amended Title 7 GCA § 9101 to provide: "The Supreme Court shall
9 have the power to govern attorney and judicial ethics, admission to, expulsion from and
10 governance of a Guam bar association; and shall promulgate rules to effectuate that power."
11 Title 7 GCA § 9101 (Jan. 14, 1993).

12
13
14 Recently, through U.S. P.L. 108-378 (approved on Oct. 30, 2004), Congress amended the
15 Organic Act, conferring the Supreme Court's authority over admissions and discipline of
16 attorneys. As amended, 48 U.S.C. § 1424-1 of the Organic Act provides: "The Supreme Court
17 of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court
18 of Guam) and shall... govern attorney and judicial ethics and the practice of law in Guam,
19 including admission to practice law and the conduct and discipline of persons admitted to
20 practice law." 48 U.S.C. §1424-1(a)(7).

21
22
23 Unquestionably, authority over attorney admissions and discipline currently rests with the
24 Supreme Court of Guam pursuant to the Organic Act and local law.

25 **B. Validity of Prior Law Governing Admissions and Discipline.**

26
27 Prior to the transfer of authority over bar admissions to the Supreme Court, admission to
28 the practice of law in this jurisdiction was governed by court rules and the provisions of the

1 Integrated Bar Act, found in Chapter 9 of Appendix A of Title 7 of the Guam Code Annotated.
2 Title 7 GCA, Appendix A, § 9113, which bars admission to individuals with a prior felony
3 conviction, is contained within the Integrated Bar Act.
4

5 Title 7 GCA, Appendix A, §9103 repeals “Chapters 1 and 1.5 of Title XXIX of the
6 Government Code.” Title 7 GCA Appx. A § 9103 (Jan. 14, 1993). Title XXIX of the
7 Government Code was codified as Chapter 9, Appendix A of Title 7, *see* Gov’t Code, § 28002
8 (1970) (setting forth the requirements now codified at 7 GCA, Appendix A, § 9113); thus, 7
9 GCA, Appendix A, § 9103, repeals Chapter 9, Appendix A of Title 7. Importantly, however,
10 section 9103’s repealer does not take effect immediately. Instead, Title 7 GCA § 9104 states that
11 the repealing provision of section 9103 “shall not take effect until the rules of the Supreme Court
12 authorized in § 9101 and § 9102 of this Chapter have been promulgated. Upon promulgation of
13 the rules described herein, the powers of the Supreme Court over the attorneys and Bar of Guam
14 shall become effective.” Title 7 GCA § 9104 (Jan. 14, 1993).
15
16

17 Reflecting the statutory language found in Title 7 GCA §§ 9103 and 9104 *as amended by*
18 P.L. 21-147, the Explanatory Note to Chapter 9, Appendix A of Title 7 states:

19 Pursuant to P.L. 21-147 (7 GCA § 9104) the power to govern attorneys and the
20 Bar of Guam is not transferred to the Supreme Court of Guam until that court not
21 only is operating, but also has adopted its own rules for the governance of
22 attorneys. Until that time, the following Chapter continues in effect. For
23 purposes of this publication, this Chapter is numbered “9” to coincide with the
24 placement of the new law on attorneys, which will take effect as described above.

25 Title 7 GCA, Appendix A, Chapter 9, Explanatory Note (1994). The Explanatory Note reflects
26 the statutory provisions instructing that the admission of attorneys to the practice of law are to be
27 made pursuant to the Rules as adopted by the Supreme Court of Guam once those rules are
28 adopted. The provisions of the Integrated Bar Act, therefore, were to remain in effect until the
Supreme Court promulgated its rules for admission in this jurisdiction.

1 Pursuant to statutory authority, on May 17, 1996, the Supreme Court adopted the interim
2 rules to govern admission to the practice of law in this jurisdiction. The Promulgation Order
3 stated:
4

5 Pending final approval of the Rules to be promulgated pursuant to §§ 9101 and
6 9103, of Title 7, G.C.A., the Court hereby promulgates interim Rules as follows:

- 7 1. The Board of Law Examiners consists of the Justices of the Supreme Court.
- 8 2. The Chief Justice shall administer the oath of attorney.

9 *All other Rules of Admission and Discipline remain in effect until further order of
10 this Court.*

11 Supreme Court of Guam Promulgation Order, May 17, 1996 (emphasis added).

12 The court explicitly continued the rules then in effect as the rules governing the
13 admission in this jurisdiction. The provisions of the Integrated Bar Act, including Title 7 GCA §
14 9113, were in effect at that time and therefore continued to remain in effect after the court's
15 adoption of the interim rules. The court has subsequently amended the Rules Governing
16 Admission to the Practice of Law and the Rules for the Discipline of Attorneys on numerous
17 occasions but has not by order repealed all the other rules of admission and discipline previously
18 in effect.²
19

20 The Introductory Paragraph to the Rules Governing Admission explains:

21 In accordance with its statutory authority and inherent authority, the
22 Supreme Court of Guam adopted and promulgated rules governing admission to
23 the practice of law in Guam in its capacity as the Board of Law Examiners.

24 These Rules were adopted May 17, 1996 and are set forth as amended,
25 most recently on February 9, 2004. The Rules, as amended, are effective
26 immediately and will be applied to matters pending before the Board. However,
27 in any instance where a pending application can show prejudice from such
28 amendment, the version of the Rules in effect at the time of his or her application
will govern in that particular case.

² See e.g. Supreme Court of Guam Promulgation Orders 98-001, 99-002, 99-003, 00-002, 01-001, 01-002, 01-002A, 01-003, 01-006, 02-005, 02-007, 02-010, and 04-001.

1 Rules Governing Admission to the Practice of Law, Introductory Paragraph.

2 Part A of the Rules Governing Admission is titled “Board to Determine Fitness of Bar
3 Applicants,” and Section 1 provides that the Board shall “administer the bar examination and
4 shall inquire into the character and fitness of applicants for admission” as well as “certify as fit to
5 practice law those applicants who have established to the Board’s satisfaction that they possess
6 the requisite integrity and character.” Section 1, Part A, Rules Governing Admission to the
7 Practice of Law.
8

9 Relevant to the issue *sub judice*, Part C of the Rules Governing Admission governs
10 “Investigation of Applicants,” and provides that the Board “shall issue a certification of
11 admission to the practice of law to the applicant upon an applicant’s passage of the bar
12 examination, proof of certification of fitness to practice law, and proof of qualification based on
13 the educational requirements under these rules.” Section 1, Part C, Rules Governing Admission
14 to the Practice of Law.
15

16 Section 2 of Part C provides a broad standard for certification, providing that an applicant
17 may be certified after investigation if he or she “ha[s] the integrity and character requisite to be a
18 member of the Guam Bar Association” Section 2, Part C, Rules Governing Admission; *cf.*
19 Section 6, Part C, Rules Governing Admission (“Upon being satisfied that an applicant who had
20 previously been denied certification of fitness to practice law on Guam possesses the integrity
21 and character requisite to be a member of the Guam Bar Association, the Board may certify the
22 applicant as fit to practice law.”).
23

24 Importantly, the Rules are silent on the minimum age requirement to take the bar
25 examination, the specific requirements for making character determinations, and the effect of a
26
27
28

1 felony conviction on a fitness determination.³ Brooks and the Prosecuting Counsel for the Ethics
2 Committee both argue that the adoption of the rules for making fitness determinations, and the
3 fact that the rules are silent with regard to felony convictions, evidences a repeal by this court of
4 the felony conviction bar set forth in 7 GCA § 9113. We disagree.

6 **C. Repeal of Requirements of Section 9113.**

7 We first reject the contention that by transferring the authority over admissions to the
8 Supreme Court, the legislature intended that all the statutes covering admissions be repealed at
9 the moment the Supreme Court's Rules Governing Admission were enacted. Rather, it is evident
10 that the intent was to have the Supreme Court determine the requirements for admissions, and
11 that only those requirements to admission that covered the same subject or overrode or repealed
12 the statutory requirements would supersede the requirements set forth in the statutes. This is
13 supported by the language of 7 GCA § 9104, which limits the effect of the repealing provision of
14 section 9103 until after "the rules of the Supreme Court authorized in § 9101 and § 9102 of this
15 Chapter have been promulgated." Title 7 GCA § 9104 (Jan. 14, 1993). By limiting the repealing
16 provision, it is evident that the legislature intended that the statutes governing admission should
17 remain in effect. This would prevent problems in the transition between the old and new rules.
18 To read otherwise (i.e., that there was a wholesale repeal), would produce the absurd result of
19 unintended and inconvenient gaps in the admissions procedures in the event the Supreme Court
20
21
22
23
24

25 ³ The "Note From the Board of Law Examiners," which precedes the Rules Governing Admission to the
26 Practice of Law, provides that certification is conditioned upon proof that the applicant is at least 18 years old, and
27 completed at least two years of college. The Note enumerates as requirements for admission all requirements set
28 forth in 7 GCA Appendix A § 9113, with the exception of the requirement in section 9113 (a) that the applicant be a
Guam resident for the preceding three (3) months, as well as section 9113 (d)'s requirement that the applicant not
have been convicted of a felony or crime of moral turpitude. However, the Note's treatment of the requirements of
section 9113 is not supported by the language of the Rules Governing Admission. The Rules do not contain any
provisions on the requirements found in section 9113. We therefore find the Note inapposite in determining the
requirements for admission, and instead find it appropriate to rely on the language of Rules *vis-à-vis* the statutes.

1 did not adopt rules on specific subjects regarding admission contained in the statutes.⁴ Such
2 result is not supported considering the conditional language of section 9104. *See Wash. State*
3 *Bar Assoc. v. State*, 890 P.2d 1047, 1051-52 (Wash. 1995).⁵
4

5 We further find that the Rules Governing Admission, as adopted by the Supreme Court,
6 do not repeal the provisions of law pertaining to felony convictions. Courts discussing the
7 validity of their statutes governing admission in light of the later adoption of court rules
8 governing admission have relied on the doctrine of implied repeal, the question being whether
9 the court rule impliedly repealed the prior statute. *See e.g. Wash. State Bar Assoc. v. State*, 890
10 P.2d 1047, 1051-52 (Wash. 1995); *In re Chi-Dooch Li*, 488 P.2d 259, 261 (Wash. 1971); *cf. In re*
11 *Admission to Bar*, 84 N.W. 611 (Neb. 1900); *In re Burton*, 107 N.W. 1015 (Neb. 1906).
12 “Repeals by implication are disfavored.” *See Sumitomo Constr. Co. v. Gov’t of Guam*, 2001
13 Guam 23, ¶ 16 (citing *Lujan v. Lujan*, 2000 Guam 21, ¶ 11). An implied repeal is found in two
14 instances: “(1) where provisions in the two acts are in irreconcilable conflict, or (2) if the later
15 act covers the whole subject of the earlier one and is clearly intended as a substitute.” *Id.*
16 (quoting *People v. Quinata*, Crim. No. 81- 0004A, 1982 WL 30546, at * 2 (D. Guam App. Div.
17 Jun. 29, 1982)). If the two laws can be reconciled, the court should avoid finding that a later
18 statute impliedly repealed an earlier one. *Id.*
19
20
21

22
23
24 ⁴ Indeed if we adopt the Petitioner and Prosecuting Counsel’s argument that there was a wholesale repeal of
25 the existing law on attorney admissions and discipline with the May 17, 1996 Promulgation Order, which simply
26 provided for the Board of Law Examiners to consist of the justices of the court and the Chief Justice to administer
the oath of attorney, and we do not accept that all rules of admission and discipline remain in effect until further
order of the court, we would have a situation where the justices would be bar examiners without a bar examination
to administer.

27 ⁵ The existence of such legislative involvement in these aspects of judicial authority does not necessarily
28 contravene separation of powers principles. *See Wash. State Bar Assoc. v. State*, 890 P.2d 1047, 1051-52 (Wash.
1995) (dissent) (recognizing that “the court has permitted broad range of legislative intrusions into matters of
inherent judicial authority over the bar, including matters more central to the judicial function of the bar than
employment practices, such as the establishment of a board of bar examiners, *minimum requirements for bar*
membership, and recommendations for procedures for bar regulation”) (citations omitted and emphasis added).

1 Since the creation of the Supreme Court, the court amended various rules of admission,
2 adding new rules to govern certain aspects of admission, *see e.g.* Supreme Court of Guam
3 Promulgation Order No. 01-003 (Oct. 30, 2001) (adopting the Multistate Essay Examination and
4 Local Question as part of the Guam Bar Examination); Supreme Court of Guam Promulgation
5 Order No. 01-006 (Nov. 1, 2001) (increasing the passing score for the Multistate Professional
6 Responsibility Examination from 75.00 to 80.00). The adoption of these new rules on specific
7 subjects relating to admissions undoubtedly repeals statutes on the same subject. This court has
8 not ruled upon the requirements for admission set forth in section 9113. Aside from the court
9 rules regarding education requirements, there is no Supreme Court rule that pertains to the
10 specific requirements for admission as set forth under 7 GCA § 9113. The court has also not
11 expressly adopted rules, *inter alia*, governing an integrated bar association (§9102), authorized
12 practice by law clerks (§9106.1), the composition of the Guam Bar Ethics Committee (§9202), or
13 when written fee agreements are required for attorneys (§9216), and if we accept the Petitioner's
14 and the Prosecuting Attorney's arguments that all of the existing statutes found in Appendix A
15 were repealed when the court adopted the Rules Governing Admission to the Practice of Law or
16 the Rules Governing the Discipline of Attorneys, there would not be any rules regulating these
17 significant areas. The court clearly did not intend for this to occur which is why we specifically
18 ordered in the May 17, 1996 Promulgation Order that all other Rules of Admission and
19 Discipline remain in effect until further order of this court. Thus, because the court, through
20 Promulgation Order issued on May 17, 1996, specifically expressed that all rules of admission
21 were to remain in effect "until further order of this Court," and the court has not adopted any rule
22 that relates to or exhibits an intent that the requirements for admission as set forth in 9113 be
23 repealed, we hold that the statutory requirements for admission under section 9113 remain in
24
25
26
27
28

1 effect. Accordingly, section 9113(d), which bars admission for applicants with a felony
2 conviction, precludes the admission of Brooks in this case.

3 We further find that 7 GCA § 9113(d) applies to both initial applications for admission,
4 as well as applications for reinstatement to the bar. There is nothing in the language of the
5 statute that limits its application to initial applications only, and there is no policy or other
6 compelling reason for imposing such limitation. The *per se* bar to admission for felony
7 convictions reflects concerns relating to the character and fitness of an applicant to practice law
8 in this jurisdiction. See Carr, Maureen M., *The Effect of Prior Criminal Conduct on the*
9 *Admission to Practice Law: The Move to More Flexible Admission Standards*, Georgetown
10 Journal of Legal Ethics, 8 Geo. J. Legal Ethics, 367, 383 (Winter 1995) (explaining that the rule
11 of *per se* disqualifying an applicant with a prior criminal conviction from admission to the state
12 bar reflects the traditional view that “certain illegal acts -- regardless of the likelihood of their
13 repetition in a lawyer-client relationship -- evidence attitudes toward law that cannot be
14 countenanced among its practitioners;” and that “to hold otherwise would demean the
15 profession’s reputation and reduce the character requirement to a meaningless pretense.”).⁶
16 From the perspective of establishing the requisite character and fitness to practice law, an
17 applicant seeking admission for the first time stands in the same position as an applicant seeking
18 reinstatement after resigning.
19
20
21
22

23 //

24 //

25
26
27 ⁶ We recognize that there are costs and risks inherent in any rule for admission or disqualification of a
28 person with a prior felony conviction and that the existing *per se* rule may result in the island community being
deprived of the assistance of a competent and capable individual who is remorseful and rehabilitated. See Carr,
supra, at 383. This case is not, however, the appropriate time or forum to weigh and debate the considerations of a
rule change or to make such a decision.

1 **III. Conclusion.**

2 We find that section 9113(d), which bars admission to applicants who have a felony
3 conviction, precludes the readmission of Brooks to the Bar of this jurisdiction. Accordingly,
4 Brooks' Motion for Acceptance is hereby **DENIED** without prejudice. Brooks may re-apply for
5 reinstatement in the event the rules for bar admission are amended to allow for the admission of
6 individuals convicted of a felony or a crime involving moral turpitude.
7

8 **SO ORDERED**, this 19th day of July, 2005.

9
10
11 **Richard H. Benson**

Robert J. Torres

12 _____
13 RICHARD H. BENSON
14 Justice *Pro Tempore*

ROBERT J. TORRES, JR.
Associate Justice

15 **Frances Tydingco-Gatewood**

16 _____
17 FRANCES TYDINGCO-GATEWOOD
18 Presiding Chief Justice⁷

19
20
21
22
23
24
25
26
27
28 _____
⁷ Chief Justice F. Philip Carbullido recused himself from this matter. As the next-senior member of the court, Justice Frances Tydingco-Gatewood serves as Presiding Chief Justice in this case.