

## IN THE SUPREME COURT OF GUAM

IN RE: Mark S. Smith

Mark S. Smith, ESQ.

Supreme Court Case No. ADC22-001 Ethics Case No. EC15-013

ORDER TERMINATING INTERIM SUSPENSION; DISCHARGING RULE 28 COUNSEL

This matter comes before the court on the Motion Re: Termination of Interim Suspension and Declaration of Counsel, both filed on January 4, 2023, under seal, by Regulation Counsel as approved by the Investigative Committee of the Comprehensive Lawyer Regulatory System. Regulation Counsel recommends that the interim suspension of Respondent Mark S. Smith ("Respondent") be terminated. Also before the court is the Report of Rule 28 Counsel, filed December 19, 2022, wherein Rule 28 Counsel seeks guidance as to whether counsel's appointment should continue. Report (Dec. 19, 2022).

On April 8, 2022, this court issued an order of interim suspension upon Respondent on the recommendation of Regulation Counsel and the Investigative Committee. The bases underlying that order were Ethics Case No. EC15-013 and the related criminal case in the District Court of Guam, CR17-00020. Under the Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings, as adopted March 16, 2021 ("GRLDEDP"), Attorney Seth Forman was appointed to serve as Rule 28 Counsel to carry out the duties and responsibilities of Respondent Page 1 of 3

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1	specified in GRLDEDP Rule 27, and any other duties assigned to Rule 28 Counsel. Order (Apr.
2	8, 2022).
3	Regulation Counsel advises that, on December 8, 2021, Respondent was found guilty by

a jury of 26 counts of wire fraud, one count of conspiracy to commit wire fraud, one count of theft of government property, three counts of money laundering, two counts of laundering monetary instruments, and one count of conspiracy to commit money laundering. Mot. at 2 (Jan. 4, 2023) (citation omitted). Respondent moved for a judgment of acquittal on all counts or for a new trial or arrest of judgment. *Id.* On June 3, 2022, the District Court granted the motion for acquittal on certain charges, and on August 26, 2022, granted Respondent's motion for acquittal on all remaining charges. *Id.* at 3. The Government moved for reconsideration, which the District Court denied. *Id.* The District Court's judgment of acquittal and notice of entry of judgment of acquittal were filed December 21, 2022. *Id.*Rule 19 of the GRLDEDP provides:

(d) Immediate Interim Suspension.
The Court shall place a lawyer on interim suspension.

(1) Imposition. The Court shall place a lawyer on interim suspension immediately upon proof that the lawyer has been found guilty of a serious crime regardless of the pendency of any appeal.

(2) Termination. The Court has exclusive power to terminate an interim suspension. In the interest of justice, the Court may terminate an interim suspension at any time upon a showing of extraordinary circumstances, after affording Regulation Counsel notice and an opportunity to be heard.

## GRLDEDP Rule 19(d). Subsection (f) of the same rule provides:

(f) Automatic Reinstatement from Interim Suspension upon Reversal of Finding of Guilt or Conviction.

If a lawyer suspended solely under the provisions of paragraph (d) demonstrates that the underlying finding of guilt or conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically

terminate any formal proceeding then pending against the lawyer, the disposition of which shall be determined by the Investigative Committee or Hearing Panel on the basis of the available evidence other than the finding of guilt or conviction.

GRLDEDP 19(f).

Regulation Counsel states that "[g]iven the status of Respondent's criminal case and the [District Court's] judgment of acquittal filed in CR17-00020, and upon authorization by the Investigative Committee," counsel moves to terminate and vacate Respondent's interim suspension and place Respondent on active status. Id. at 5. See also GRLDEDP 19(f), 20(d). Further, Regulation Counsel, with the authorization of the Investigative Committee, does not object to the termination of Rule 28 Counsel's appointment. On consideration of these pleadings, the court **ORDERS**: 1. That the April 8, 2022, order imposing interim suspension upon Respondent is VACATED, and Respondent's interim suspension is TERMINATED. 2. That the appointment of Rule 28 Counsel is **TERMINATED**. As of the date of this order, Attorney Seth Forman is discharged of his duties as Rule 28 Counsel in this matter. SO ORDERED this 8th day of February, 2023. /s/ /s/ F. PHILIP CARBULLIDO **KATHERINE A. MARAMAN Associate Justice Associate Justice** /s/ **ROBERT J. TORRES Chief Justice** Page 3 of 3