V. Conclusion

Appeals from the Kosrae Land Court are heard by a single Kosrae State Court trial division justice and not by a three-judge panel. No Kosrae State Court appellate division has been created yet so an appeal from a single judge in the Kosrae State Court is to the FSM Supreme Court appellate division, which will hear appeals with a three-judge panel.

Generally, Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. The appellants should be afforded the opportunity to mount a collateral attack on the Trust Territory High Court judgment that otherwise must be given res judicata effect. We therefore remand the matter to the Kosrae State Court for it to determine whether the appellants may obtain relief from the Trust Territory judgment. The July 7, 2011 decision is vacated so that the appellants may present their collateral attack and their grounds for it and so the Kosrae State Court may consider and rule on that attack's merits before deciding whether to affirm the Land Court.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

IN THE MATTER OF THE SANCTION OF ATTORNEY YOSLYN G. SIGRAH and TRIAL COUNSELOR LIPAR L. GEORGE, Appellants.	)	APPEAL CASE NO. K5-2013

OPINION

Argued: February 20, 2014
Decided: March 20, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellants: Sasaki L. George, Esq.
P.O. Box 780
Tafunsak, Kosrae FM 96944

For the Complainants: Canney Palsis, Esq. (brief)
(Heirs of Lonno) Micronesian Legal Services Corporation
P.O. Box 38
Tafunsak, Kosrae FM 96944

* * * *

HEADNOTES

Attorney and Client – Attorney Discipline and Sanctions

Considering the seriousness of an attorney disciplinary proceeding, the service on the attorney should be the same as that required for the service of process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions; Constitutional Law – Due Process – Notice and Hearing

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Appellate Review – Standard – Civil Cases; Constitutional Law – Due Process

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Sanctions

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

Appellate Review – Standard – Civil Cases – De Novo

Review of conclusions of law is de novo. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

Civil Procedure – Sanctions

The signature required by Rule 11 does not certify that the signer prepared or wrote the document. It only certifies that the signer has read it and that the signer has made a reasonable inquiry into whether it is well grounded in fact and warranted by law. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

Attorney and Client; Civil Procedure – Sanctions

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

Civil Procedure – Sanctions

An attorney does not violate Rule 11 by signing and filing a brief drafted by another attorney. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Civil Procedure – Sanctions

Rule 11, by its terms, only requires that a filing be signed by at least one attorney or trial counselor of record in that counsel's individual name. It does not require that all of the attorneys who worked on the filing sign it. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Civil Procedure

When a court in the FSM has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule.

In re Sanction of Sigrah, 19 FSM R. 305, 311 n.1 (App. 2014).

Civil Procedure – Sanctions

Sanctions for violating Rule 11 can only be imposed on the counsel who signed the filing, not on other counsel. In re Sanction of Sigrah, 19 FSM R. 305, 311 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions; Evidence – Burden of Proof

In an attorney discipline proceeding the facts must be proven by clear and convincing evidence and not by the lower preponderance-of-the-evidence standard. In re Sanction of Sigrah, 19 FSM R. 305, 312 n.3 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions

The practice of "ghostwriting" refers to the conduct of an attorney who prepares pleadings and provides substantial legal assistance to a pro se litigant, but does not enter appearance or otherwise identify himself or herself in the litigation. Ghostwriting or drafting filings for a pro se litigant without that fact being disclosed violates an attorney's ethical obligation of candor toward the tribunal. The rationale for court disapproval of ghostwriting is that courts liberally construe pro se pleadings precisely because they were drafted without professional help and if a pro se litigant falsely appears to be without professional assistance, that litigant gains an unfair advantage. In re Sanction of Sigrah, 19 FSM R. 305, 312 (App. 2014).

Civil Procedure – Pleadings – Striking Pleadings; Civil Procedure – Sanctions

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Attorney and Client; Civil Procedure – Sanctions

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Civil Procedure – Sanctions

An attorney's research and drafting of a brief filed by another counsel for represented parties does not constitute the ethical lapse of "ghostwriting." In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions; Civil Procedure – Sanctions; Contempt

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions; Civil Procedure – Sanctions

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains

responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This appeal is from the Kosrae State Court's May 17, 2013 order that struck the brief signed and submitted by counsel Lipar L. George for the appellees in Heirs of Lonno v. Tilfas, Civil Action No. 84-11 (appeal from a Kosrae Land Court decision) and that disciplined counsel George and attorney Yoslyn G. Sigrah, both of whom were both licensed to appear before the Kosrae State Court. We reverse. Our reasons follow.

I. BACKGROUND

Kersin Tilfas, Maxwell Salik, and Esther Euver prevailed in a boundary dispute in Kosrae Land Court. The Heirs of Kilafwakun Lonno appealed that decision to the Kosrae State Court. The Heirs of Lonno filed their opening brief in that court and Lipar L. George, counsel of record for Tilfas, Salik, and Euver, filed a response brief. The Heirs of Lonno moved to have the response brief stricken because, although it was signed by the counsel of record, it had been drafted by different counsel, Yoslyn G. Sigrah, Lipar George's sister. The Heirs of Lonno also moved that those two counsel be sanctioned. The notice of hearing on the motion was served only on Lipar George. The Kosrae State Court heard the motion on May 14, 2013.

On May 17, 2013, the Kosrae State Court struck the brief of Tilfas, Salik, and Euver and sanctioned their counsel by suspending Sigrah, the authoring counsel, from practice of law for one year and by warning the counsel of record, George, that henceforth "he is to do his own research and writing when he is counsel of record and if he receives assistance in researching and writing, the assisting counselor must first file a Notice of Appearance with [the Kosrae State] Court and also sign the brief or pleading." Order Granting Motion to Strike Appellee's [sic] Brief and Request for Sanction Under Rule 24 ("Order") at 3 (May 17, 2013).

On May 30, 2013, this order was appealed to the FSM Supreme Court appellate division. The appeal was docketed as K5-2013. On a motion for reconsideration, the Kosrae State Court issued a July 12, 2013 order setting oral argument without the stricken brief, and also denying a stay pending appeal.

On August 1, 2013, a single appellate justice granted a stay of the attorney sanctions and noted that the appeal involved two issues: 1) the striking of the response brief of Tilfas, Salik, and Euver because one counsel wrote the brief that another signed and filed, and 2) the Kosrae State Court's sanction of the authoring counsel by suspending her from the practice of law and the issuance of a warning to the other counsel. The single justice also noted that a sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest but that the other relief sought was an order directing the Kosrae State Court to reinstate the stricken brief and proceed from there with oral argument on the merits – that is, a writ of prohibition issued under Appellate Rule 21 and directed to the Kosrae State Court prohibiting it from proceeding without considering their brief and allowing them to argue.

The single justice therefore ordered that the appellate filings be amended so that the sanctioned counsel would proceed under their own names and as real parties in interest on the appeal of the sanctions against them, and that if, Tilfas, Salik, and Euver intended to seek a writ of prohibition directed to the Kosrae State Court in Civil Action No. 84-11, they had to conform their filings and service to Appellate Rule 21's requirements. Tilfas, Salik, and Euver then filed, on August 30, 2013, a separate petition for a writ of prohibition which was assigned docket number K8-2013. That petition was denied on October 1, 2013. Tilfas v. Aliksa, 19 FSM R. 181 (App. 2013).

The sanctioned counsel now proceed in this appeal under their own names and as the real parties in interest.

II. Issues Presented

Sigrah and George contend that the Kosrae State Court's sanctions were not consistent with substantial justice because 1) Yoslyn Sigrah's right to due process had been violated since the notice of the proposed disciplinary sanction was not served on her; 2) there was no Kosrae Civil Procedure Rule 11 violation since the brief was not filed for an improper purpose or in bad faith and since the adverse party and the Kosrae State Court relied on and used a version of Rule 11 that had been superseded; and 3) there was no ghostwriting since there were no pro se parties to ghostwrite for.

III. Analysis

A. *Due Process*

Sigrah contends that she did not receive due process of law because she was never served with notice that she might be sanctioned or disciplined. The Heirs of Lonno's motion to strike the brief and sanction counsel was served on George only. The court's notice setting the May 14, 2013 hearing was also served only on George. The Heirs of Lonno contend that Sigrah had adequate notice through the service on George because Sigrah personally appeared at the May 14th hearing and vigorously defended against the motion.

Service on Sigrah's brother George when they live on different islands and do not maintain an office or residence together does not constitute adequate notice to Sigrah that she has to defend against disciplinary sanction that could (and in this case, did) include suspension from the practice of law for a considerable time. Considering the seriousness of the proceeding, *see* In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 171 (App. 1999) (attorney disciplinary proceeding is adversarial and quasi-criminal in nature), the service on Sigrah should have been the same as that required for the service of process. It was not.

The Kosrae State Court sanctioned Sigrah and George under its authority pursuant to Kosrae Appellate Rule 24(b). That rule is, in all material respects, similar to FSM Appellate Rule 46(c). The FSM Supreme Court has previously noted that the "[i]mposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process." Palsis v. Tafunsak Mun. Gov't, 16 FSM Intrm. 116, 123 (App. 2008) (citation omitted). Due process issues are generally questions of law that are reviewed de novo. Heirs of Jerry v. Heirs of Abraham, 15 FSM Intrm. 567, 571 (App. 2008).

Sigrah may have, as the appellees suggest, waived the defective notice when she appeared and vigorously defended her position, but that is unclear. We do not need to decide this because Sigrah prevails on the merits – what Sigrah was accused of doing is not an ethical violation so we need not consider the waiver issue. We do note, however, that service on Lipar George did not give the Kosrae

State Court personal jurisdiction over Yoslyn Sigrah when that was neither her usual place of abode nor her usual place of employment. Service should have been made on her personally and separately from service on George.

B. *Kosrae Civil Procedure Rule 11*

Sigrah and George contend that the Rule 11 sanction is defective because the Kosrae State Court quoted (and the Heirs of Lonno's motion relied on) a version of Rule 11 that was superseded in 2002 when Kosrae General Court Order 2002-5 replaced the then Rule 11 with the current version. The Heirs of Lonno contend that since the rationale behind Rule 11 remained the same before and after its amendment the Kosrae State Court's findings and sanctions should therefore stand. Our review will be limited to the Rule 11 that has been in effect in Kosrae since 2002 and whether the Kosrae State Court's order was proper under it. While it is unfortunate that the Kosrae State Court analyzed the sanction motion under a superseded version of Rule 11, we will affirm the trial court order only if it was permissible under the operative Rule 11.

We review Rule 11 sanction orders using the abuse of discretion standard. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997). A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992). Our review of conclusions of law is de novo. Palsis v. Kosrae, 17 FSM Intrm. 236, 240 (App. 2010); George v. Albert, 17 FSM Intrm. 25, 30 (App. 2010).

1. *Lipar L. George's Rule 11 Sanction*

The Kosrae State Court sanctioned Lipar George because it reasoned that "[b]y signing the brief, Counsel Lipar George is representing to the court that he researched and prepared the document when in fact this is not true." Order at 2. George asserts that he read the brief and, after reasonable inquiry, he then adopted it as his own and signed it. The Heirs of Lonno contend that "the counsel of record must be able to do his own legal work without delegating that legal duty to someone who is not a counsel of record." Appellees' Br. at 6.

The Kosrae State Court's conclusion of law about what George's signature represented is erroneous. Under Rule 11, George, by signing the brief, was representing to the court that he

> has read the . . . paper; that to the best of [his] knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Kos. Civ. R. 11. George thus did not represent to the court that he researched and wrote the brief because the signature required by Rule 11 does not certify that the signer prepared or wrote the document. It only certifies that the signer has read it and that the signer has made a reasonable inquiry into whether it is well grounded in fact and warranted by law. This is not the same as representing that the signer did all the research and writing.

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. Lawyers in other jurisdictions that are governed by similar or identical ethical rules and

considerations commonly rely on research and drafting by other lawyers, or paralegals, or other legal staff.

Accordingly, George did not violate Rule 11 by signing and filing the brief drafted by Sigrah. George's sanction must therefore be reversed.

2. *Sigrah's Rule 11 Sanction*

Sigrah contends that there was no Rule 11 violation on her part because she did not sign anything and Rule 11 only imposes responsibility on the document's signer.

> Every paper of a party represented by an attorney or trial counselor shall be signed by at least one attorney or trial counselor of record in that counsel's individual name, who[se] address and telephone number shall be stated. . . . The signature of an attorney or trial counselor constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Kos. Civ. R. 11. Sigrah and George further contend that the brief was not filed in bad faith nor was it interposed for an improper purpose. They also contend that the rule only requires that only one attorney of record had to sign the filed brief.

Rule 11, by its terms, only requires that a filing "be signed by at least one attorney or trial counselor of record in that counsel's individual name . . . ." Kos. Civ. R. 11. It does not require that all of the attorneys who worked on the filing sign it. Intra-Mar Shipping (Cuba) S.A. v. John S. Emery & Co., 11 F.R.D. 284, 286 (S.D.N.Y. 1951); United States ex rel. Foster Wheeler Corp. v. American Sur. Co. of N.Y., 25 F. Supp. 225, 226 (E.D.N.Y. 1938).[1] The brief was signed by one counsel of record – George.

Sanctions for violating Rule 11 can only be imposed on the counsel who signed the filing, not on other counsel.[2] *E.g.*, Business Guides, Inc. v. Chromatic Commc'ns Entrs., Inc., 498 U.S. 533, 546-47, 111 S. Ct. 922, 930-31, 112 L. Ed. 2d 1140, 1156 (1991); Triad Sys. Corp. v. Southeastern Express Co., 64 F.3d 1330, 1339-40 (9th Cir. 1995) (attorneys who were actively involved in the case but who did not sign misleading document could not be sanctioned under Rule 11; only the attorney who signed the document could be); Kale v. Obuchowski, 985 F.2d 360, 363-64 (7th Cir. 1993) (attorney who did not sign document cannot be sanctioned under Rule 11 simply because he played a substantial role in the document's preparation); Veillon v. Exploration Servs., Inc., 876 F.2d 1197,

---

[1] When a court in the FSM has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. *Cf. In re* Bickett, 11 FSM Intrm. 124, 126-29 (Kos. S. Ct. Tr. 2002) (U.S. Rule 11 cases used to determine the reach of Kosrae Civil Procedure Rule 11).

[2] When counsel signed the filing, Rule 11 sanctions can sometimes be imposed on the counsel's client. "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . . ." Kos. Civ. R. 11.

1201 (5th Cir. 1989) (abuse of discretion to sanction both attorneys when only one signed the frivolous motion); Pony Express Courier Corp. of Am. v. Pony Express Serv., 872 F.2d 317, 319 (9th Cir. 1989) (when Rule 11 sanctions are imposed on attorney, co-counsel who did not sign pleading cannot be held liable under Rule 11 for its contents); In re Ruben, 825 F.2d 977, 984 (6th Cir. 1987) (Rule 11 cannot support sanctions against an attorney who did not sign the filing). Sigrah did not sign the brief. She cannot be sanctioned under Rule 11.

C. *Ghostwriting*

The Kosrae State Court did not find that the brief was imposed for any improper purpose or in bad faith, and the brief was "signed by at least one attorney or trial counselor of record in that counsel's individual name." The only thing the Kosrae State Court considered improper about the brief was that it was not also signed by the admitted attorney who researched and drafted it. The Kosrae State Court concluded that this fell within the ethical lapse of "ghostwriting." We review de novo this conclusion of law.

The Kosrae State Court noted that it had previously ruled that "'attorney involvement in drafting pro se court documents constitutes unprofessional conduct and is inconsistent with procedural, ethical and substantive rules of court.'" Order at 1 (quoting Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 81 (Kos. S. Ct. Tr. 2004)). The Kosrae State Court acknowledged that the case did not involve pro se litigants, but it went on to say that "however, ghostwriting still constitutes an ethical violation and the same rule would apply. The trial counselor doing the ghostwriting would still be evading the responsibilities imposed by Rule 11 of the Kosrae Rules of Civil Procedure." Order at 1-2.

We do not consider what happened here to be ghostwriting or at least the type of ghostwriting that can give rise to ethical concerns or to disciplinary sanctions against attorneys.[3] "[T]he practice of 'ghostwriting' . . . refers to the conduct of an attorney who prepares pleadings and provides substantial legal assistance to a *pro se* litigant, but does not enter appearance or otherwise identify himself or herself in the litigation." Wesley v. Don Stein Buick, Inc., 987 F. Supp. 884, 885 (D. Kan. 1997). Ghostwriting or drafting filings for a pro se litigant without that fact being disclosed violates an attorney's ethical obligation of candor toward the tribunal. Duran v. Carris, 238 F.3d 1268, 1272 (10th Cir. 2001). The rationale for court disapproval of ghostwriting is that courts liberally construe pro se pleadings precisely because they were drafted without professional help and if a pro se litigant falsely appears to be without professional assistance, that litigant gains an unfair advantage. Wesley, 987 F. Supp. at 885-86.

The Kosrae State Court cited Delso v. Trustees for Retirement Plan for Hourly Employees of Merck & Co., 2007 WL 766349 (D.N.J. Mar. 6, 2007), for the proposition that "attorneys [should] sign pleadings for which they are responsible." Order at 2 (May 17, 2013). Delso involved an attorney informally assisting a pro se litigant seeking retirement pay benefits. Delso, at 1. The Delso court concluded that while an attorney's undisclosed ghostwriting for a pro se litigant did not violate Rule 11 but contravened the spirit of the rule, *id.* at 18, it did violate the attorney's duty of candor to the court under Rule of Professional Conduct 3.3(a), Delso, at 14-15, and that the attorney's participation should have been disclosed, *id.* at 17. The Duran court, which the Delso court relied on, held that an attorney

---

[3] We note that in an attorney discipline proceeding the facts must be proven by clear and convincing evidence and not by the lower preponderance-of-the-evidence standard. *In re* Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999) (standard of proof for establishing attorney misconduct allegations is clear and convincing evidence). The facts here are undisputed – Sigrah researched and drafted the opening brief in Heirs of Lonno v. Tilfas, Kosrae State Court Civil Action No. 84-2011.

must refuse to provide ghostwriting assistance unless the client specifically commits herself to disclosing the attorney's assistance to the court upon filing. Duran, 238 F.3d at 1273. Delso thus offers no support for the Kosrae State Court's proposition that ghostwriting is an ethical violation when it is not done for a pro se litigant. In all the cases our research located involving "ghostwriting," it always involved counsel for a pro se litigant.

Even if pleadings or other filings are "ghostwritten" there is no authority that a ghostwritten filing must be stricken. Robinson v. Home Depot USA Inc., 478 F. App'x 820, 825 (5th Cir. 2012). The usual result would be that the court would no longer give the pro se litigant the leeway normally given unrepresented lay parties and would require either that the ghostwriter file an appearance or that the ghostwriting attorney's identity be disclosed.

Lastly, this is not a case where a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it. In such a case, the attorney signature on the filing would constitute assisting a person who is not a member of the bar in the performance of activity that would constitute the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. *See* Kos. MRPC R. 5.5(b).

Sigrah's research and drafting of a brief filed by another counsel for represented parties did not constitute the ethical lapse of "ghostwriting." Her sanction for ghostwriting must therefore be reversed.

D. *Other Ground to Discipline Yoslyn Sigrah*

The Heirs of Lonno contend that if the Kosrae State Court's findings and order are not upheld, Sigrah's suspension should remain in place because she has committed another improper act in relation to the underlying case.

We will not consider this ground. It was never raised in the Kosrae State Court nor was it a ground on which the Kosrae State Court based its sanctions. Generally, an issue not raised in the lower court cannot be raised on appeal. Even further, this is an action by Sigrah which evidently was not even mentioned before the Kosrae State Court. As noted above, the imposition of disciplinary sanctions is subject to due-process scrutiny. Palsis, 16 FSM Intrm. at 123; Heirs of George v. Heirs of Dizon, 16 FSM Intrm. 100, 107 (App. 2008). An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her, whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM Intrm. 79, 84 (App. 2001). Sigrah has never had the proper notice of this ground or the opportunity to be heard on it.

V. Conclusion

The Kosrae State Court abused its discretion because it based its decision on erroneous conclusions of law about what Rule 11 meant a counsel's signature was certifying. It also erred as a matter of law about what constitutes sanctionable ghostwriting. Sigrah's suspension, the warning or admonishment of George, and the striking of the brief of Tilfas, Salik, and Euver were all based on erroneous conclusions of law. The Kosrae State Court therefore erred when it imposed those disciplinary sanctions and struck the brief. Accordingly, the May 17, 2013 order is reversed and the sanctions vacated.

An attorney relying on others, even non-attorneys, to do the research or drafting is not

sanctionable since a lawyer is not prohibited "from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work." FSM MRPC R. 5.5(b) cmt. By signing a filing, the signer retains or assumes responsibility for the work. Kos. Civ. R. 11.

* * * *

FSM SUPREME COURT TRIAL DIVISION

SEPE F. PALIKKUN and FRANCIS P. SIGRAH, as Guardians for RICHARD TIMOTHY GEORGE, Plaintiffs, vs. FSM SOCIAL SECURITY ADMINISTRATION and the FSM SOCIAL SECURITY ADMINISTRATION BOARD OF DIRECTORS, Defendants.	CIVIL ACTION NO. 2013-2002

ORDER GRANTING DISMISSAL

Dennis K. Yamase
Associate Justice

Decided: March 25, 2014

APPEARANCES:

For the Plaintiffs: Charlton Timothy
Canney Palsis, Esq. (Supervising attorney)
Micronesian Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

For the Defendants: Micahel J. Sipos, Esq.
P.O. Box 2069
Kolonia, Pohnpei FM 96941

* * * *

HEADNOTES

Social Security; Statutes of Limitation

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun