this disciplinary referral case arose. The disciplinary counsel views this as a mitigating factor and therefore decided not to oppose the dismissal motion.

While the court concurs, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. *See* In re Boone, 7 P.3d 270 (Kan. 2000) (multiple discovery and other misconduct in seven cases over a five-year period). However, this disciplinary complaint arose from a single case in which the respondent attorney abused the discovery process.

In light of an attorney's duty to zealously represent clients, FSM MRPC R. pmbl. ("[a]s advocate, a lawyer zealously asserts the client's position under the rules of the adversary system"); in light of the comprehensive discovery sanctions imposed on the respondent attorney's client; and in light of the long delay in contacting and serving the respondent attorney once the respondent attorney had been located in the United States, the motion to dismiss was granted. This case is closed. This order shall be published.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK, Plaintiff, vs. PERDUS I. EHSA and TIMAKYO I. EHSA a/k/a TIMAKIO I. EHSA, Defendants.	)	CIVIL ACTION NO. 2007-035

ORDER DENYING RULE 11 SANCTIONS

Ready E. Johnny
Associate Justice

Hearing: October 3, 2014
Decided: October 13, 2014

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.
P.O. Box M
Kolonia, Pohnpei FM 96941

For the Defendants: Benjamin M. Abrams, Esq.
International Guam Law Offices, P.C.
P.O. Box 141
Hagatna, Guam 96932

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HEADNOTES

Civil Procedure – Filings; Civil Procedure – Sanctions

An attorney's signature on a filing constitutes a certificate by the signer that the signer has read the filing and 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. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 580-81 (Pon. 2014).

Civil Procedure – Filings; Civil Procedure – Pleadings; Civil Procedure – Sanctions

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Notaries

Generally, a notarized signature is presumed to be authentic. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Notaries

Until a party has become aware of operative facts to discover that the signature may have been forged, that party is entitled to rely on the authenticity of the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Civil Procedure – Pleadings; Contracts; Notaries

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Civil Procedure – Sanctions; Notaries

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On October 3, 2014, this came before the court to hear the Defendants' Motion for Rule 11 Sanctions Against Plaintiff, filed March 3, 2014; Plaintiff's Opposition to Defendants' Motion for Rule 11 Sanctions Against Plaintiff, filed April 11, 2014; and Defendants' Reply to Plaintiff's Opposition Defendants' Motion for Rule 11 Sanctions and Request for Live Hearing, filed April 21, 2014. The motion is denied as follows.

An attorney's signature on a filing "constitutes a certificate by the signer that the sig

read" the filing and "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." FSM Civ. R. 11.

The movants contend that when the FSM Development Bank's attorney signed the original complaint which included a claim against Ellen Mae Manlapaz, the bank's attorney violated Rule 11 because, in their view, if the bank's attorney had made a reasonable inquiry, that inquiry would have revealed that Ellen Mae Manlapaz's signature on the promissory notes and guaranty was forged and the bank could not, in good faith, have filed suit against Ellen Mae Manlapaz. The movants assert that if the bank had compared the Ellen Mae Manlapaz "signatures" on the notes and guaranty against her signature on the Pacific Foods and Services, Inc. corporate documents, it would have been obvious that they were not signed by the same person and that therefore the Ellen Mae Manlapaz signatures on the notes and guaranty "forged."[1]

The bank argues that even if the signatures had been compared, the comparison would have been meaningless since the signature on the corporate documents was by a twelve-year old and a twelve-year old's signature changes greatly by age 25 when the notes and guaranty were signed. The bank contends that its attorney's inquiry was reasonable.

The duty to make a "reasonable inquiry" means an inquiry reasonable under all the case's circumstances. In re Sanction of Berman, 7 FSM R. 654, 656-57 (App. 1996). The signature on the guaranty that purported to be Ellen Mae Manlapaz's signature was notarized. Generally, a notarized signature is presumed to be authentic.

Until a party has become "aware of operative facts to discover" that the signature may have been forged, that party is "entitled to rely upon the authenticity of [the] notarized signature." Stride Rite Children's Group, Inc. v. Siegel, 703 N.Y.S.2d 642, 643 (N.Y. Sup. Ct. App. Div. 2000) (plaintiff was aware of enough operative facts that notarized signature may have been forged when alleged signer defended an earlier lawsuit on that ground). A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but when the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. Fabe v. Floyd, 405 S.E.2d 265, 270 (Ga. Ct. App. 1991).

Accordingly, the bank's attorney did not violate Rule 11 when the complaint was signed and filed since the bank's attorney was entitled to rely on the notarized signatures. The attorney was unaware of operative facts to discover that the notarized Ellen Mae Manlapaz signature was not hers. Therefore, under this case's circumstances, a reasonable inquiry was made before the complaint was signed and filed.

A default judgment was entered against Ellen Mae Manlapaz. Counsel appeared for all defendants sometime in 2007. New counsel appeared for Ellen Mae Manlapaz in 2009. Only later, in 2010, did Ellen Mae Manlapaz's new counsel assert, by letter to the bank's counsel, that Ellen Mae Manlapaz did not sign the notes and guaranty.

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[1] The parties now agree that the signatures on the notes and guaranty were actually those of Ellen T. Ehsa, Perdus Ehsa's wife and the mother of Ellen Mae T. Ehsa (now Ellen Mae Manlapaz). The bank suggests that because of the similarity of the names, bank personnel accidentally obtained the wrong person's signature on the loan documents.

When Ellen Mae Manlapaz first moved to vacate the judgment against her, the bank opposed the motion on the ground that it was time-barred and distrusted the copies of the Philippine passport stamps that were supposedly in Ellen Mae Manlapaz's passport since they were not authenticated and it was widely known that Philippine immigration stamps were frequently forged. When Ellen Mae Manlapaz later provided the bank with a certified copy of the birth certificate of Ellen Mae Manlapaz's child showing that Ellen Mae Manlapaz must have been in the Philippines giving birth when the loan documents were executed, the bank withdrew its opposition and Ellen Mae Manlapaz was granted relief from the judgment against her in this case.

Reasonable inquiry having been made, the defendants' Motion for Rule 11 Sanctions is denied.

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FSM SUPREME COURT TRIAL DIVISION

IN THE MATTER OF ATTORNEY EDWARD T. BUCKINGHAM, Respondent Attorney.	)	DPA NO. 001-2014

ORDER OF SUSPENSION

Ready E. Johnny
Acting Chief Justice

Hearing: October 6, 2014
Decided: October 13, 2014

APPEARANCE:

Disciplinary Counsel: Aaron L. Warren, Esq.
P.O. Box PS-111
Palikir, Pohnpei FM 96941

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HEADNOTES

Attorney and Client – Attorney Discipline and Sanctions

The FSM Supreme Court cannot impose reciprocal discipline on an attorney for the failure to pay annual bar dues in CNMI because this would not constitute misconduct in this jurisdiction since there are no annual bar dues in the FSM Supreme Court. The court cannot impose reciprocal discipline when the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction. In re Buckingham, 19 FSM R. 582, 583 n.1 (Pon. 2014).

Attorney and Client – Attorney Discipline and Sanctions

An attorney convicted in the Northern Marianas of use of public supplies, services, time, and personnel for campaign activities, use of the name of a government department or agency to campaign for a candidate running for public office, three counts of misconduct in public office, theft of services, and conspiracy to commit theft of services and suspended from the practice of law in the Northern