RULES OF THE SUPREME COURT OF THE STATE OF HAWAIʻI

(SCRU-11-0000068)

Adopted and Promulgated by the Supreme Court of the State of Hawaiʻi

As amended April 16, 1984
Effective June 1, 1984
With Amendments as Noted

The Judiciary
State of Hawaiʻi

RULES OF THE SUPREME COURT
OF THE STATE OF HAWAIʻI

Table of Contents

Rule 1. ADMISSION TO THE BAR
- 1.1. Authority of Hawaiʻi Supreme Court
- 1.2. Board of Examiners
  - (a) Composition and Reimbursement
  - (b) Officers of the Board
  - (c) Duties
  - (d) Governance
- 1.3. Requirements for admission
  - (a) Applications
  - (b) Legal Education or Experience Requirements
  - (c) Good Character and Fitness
  - (d) Investigation of Applications
  - (e) Review of Adverse Recommendations as to Good Character and Fitness
  - (f) Non-Standard Testing Accommodations
  - (g) Examinations
  - (h) Child Support Enforcement
  - (i) Student Loan Enforcement
- 1.4. Fees
- 1.5. Oath and admission
  - (a) Deadline for Admissions
- 1.6. Attorney's license, form of
- 1.7. Limited admission of military attorneys
  - (a) Full-time active duty officers
  - (b) Term limitation; extensions
  - (c) Client and compensation limitation
  - (d) Discipline; dues
- 1.8. Law school faculty members; *Pro tem* membership
- 1.9. *Pro hac vice* appearance of counsel
- 1.10. Resignation from the bar while in good standing
- 1.11. Readmission after resignation
- 1.12. Immunity

1.13. Specialization
(a) Petition for Certificate of Specialization
(b) Contents of Petition
(c) Nature of Proceeding; Filing Fee
(d) Form of Certificate
(e) Limitations
(f) Revocation of Certification
(g) Renewal
1.14. Mandatory professionalism course
(a) Professionalism Course
(b) Proof of Compliance
(c) Administrative Suspension
(d) Reinstatement
(e) Fees
1.15. Effect of Hawai‘i Electronic Filing and Service Rules
1.16. Limited Admission of Attorneys Employed by Non-profit Organizations Providing Civil Legal Services to Economically Disadvantaged Persons
(a) Employees
(b) Term Limitation; Extensions
(c) Client and Compensation Limitation
(d) Discipline; Dues

Rule 2. DISCIPLINARY RULES
2.1. Jurisdiction
2.2 Grounds for discipline
2.3. Types of discipline
2.4. Disciplinary board
2.5. Hearing committees
2.6. Disciplinary counsel
2.7. Procedure
(a) Investigation
(b) Minor misconduct
(c) Formal hearing
(d) Review by Board and Supreme Court
(e) Elimination or suspension of hearing proceedings
2.8. Immunity
2.9. Refusal of complainant to proceed, compromise, etc.
2.10. Matters involving related pending civil or criminal litigation
2.11. Service
2.12. Power to subpoena respondents and witnesses; pretrial proceedings
2.12A. Failure to cooperate
(a) Grounds for suspension
(b) Petition; order to appear; findings
(c) Application to defend
(d) Reinstatement

2.13. Attorneys convicted of crimes
2.14. Resignation in lieu of discipline or disbarment by consent of attorneys under disciplinary investigation or prosecution
2.15. Reciprocal Action
2.16. Disbarred or suspended attorneys
2.17. Reinstatement
(a) Resumption of Practice
(b) Time to Apply
(1) Disbarred attorney
(2) Attorney suspended 1 year or less
(3) Attorney suspended more than 1 year
(4) Burden of proof; eligibility
(5) Evidence costs, lawyers' fund paid
(6) Required evidence
(7) Subsequent petitions
(c) Petition the board; serve counsel; investigation; hearing; reports
(d) Expenses
2.18. Deleted
2.19. Proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated
2.20. Trustee proceedings
(a) Grounds for appointment of trustee
(b) Confidentiality
(c) Duties of trustees
(d) Disposition of unclaimed files
2.21. Deleted
2.22. Confidentiality
2.23. Interim suspension
2.24. Audit of trust accounts
(a) When audit may be ordered
(b) Random audits
(c) Cost of audit
(d) Examination of other financial accounts
(e) Review
2.25. Effect of Hawai'i Electronic Filing and Service Rules
2.26. Effective date

Rule 3. ATTORNEY AND CLIENT FIDUCIARIES

Rule 4. JUDICIAL COUNCIL
(a) Appointment
(b) Functions
(c) Continuing functions
(d) Quorum

Rule 5. HAWAIʻI REVISED CODE OF JUDICIAL CONDUCT

Rule 5.1. ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS
(a) Reserved
(b) Reserved
(c) Definitions
(d) General provisions and exclusions
(e) Request for extended coverage
(f) Standard for consent to extended coverage
(g) Restrictions on extended coverage
(h) Procedure for extended coverage

Rule 5.2. TECHNICAL GUIDELINES TO BE FOLLOWED WHEN EXTENDED COVERAGE IS PERMITTED UNDER RULE 5.1 OR WHEN A JUDGE GRANTS A SEPARATE REQUEST
(a) Equipment and personnel
(b) Sound and light criteria

Rule 5.3. USE OF ELECTRONIC DEVICES IN COURTROOMS BY THE BAR, JUDICIARY PERSONNEL AND SELF-REPRESENTED LITIGANTS
(a) Application
(b) Requirements for use

Rule 6. LAWYER'S PROFESSIONAL BUSINESS ORGANIZATIONS
(a) Compliance with this rule and applicable statutes
(b) Name
(c) Limitation to the practice of law
(d) Shares; ownership and transfer
(e) Directors
(f) Officers
(g) Financial responsibility
(1) Liability notice
(2) General rule on liability
(3) Unacceptable errors and omissions coverage
(h) Compliance with law and rules of court
(i) Attorney-client relationship unchanged
(j) Discipline and enforcement

Rule 7. SUPERVISED STUDENT-PRACTICE OF LAW
7.1. Definitions
7.2. Activities of law student interns
7.3. Qualification procedures for law student interns
7.4. Duration of law student intern authorization and compensation limitations
7.5. Other law student intern activities

7.6. Supervision of law student practice
7.7. Miscellaneous

Rule 8. JUDICIAL DISCIPLINE
8.1. Organization of commission
(a) Membership; chairperson
(b) Terms
(c) Compensation
(d) Quorum; number of votes for action
(e) Meetings
(f) Annual report
(g) Non-participation by members
8.2. Jurisdiction and powers of commission
(a) Powers in general
(b) Persons subject to discipline
(c) Jurisdiction of commission
(d) Subpoena and discovery
(e) Rules of procedure and forms
8.3. Immunity
8.4. Confidentiality
(a) In general
(b) Disclosure
(c) Public statements by commission
8.5. Grounds for discipline
(a) In general
(b) Proceedings not substitute for appeal
8.6. Complaint procedure
(a) Initiation of procedure
(b) Privilege
(c) Discretionary notice
(d) Screening of complaints
(e) Mandatory notice
(f) Preliminary investigation and evaluation
(g) Determination
(h) Insufficient cause to proceed
(i) Disposition in lieu of further proceedings
8.7. Appointment of special counsel
8.8. Determination on report of special counsel
8.9. Formal hearing
(a) Complaint or statement
(b) Answer
(c) Termination after answer
(d) Notice of hearing
(e) Presentation; cross-examination; evidence
(f) Findings and recommendations
8.10. Review by Supreme Court

8.11. Charge against supreme court justice
8.12. Interim sanctions
(a) Suspension for felony
(b) Suspension for misdemeanor
(c) Misdemeanor suspension review
(d) Other interim suspension
(e) Disability suspension
8.13. Special provisions for cases involving mental or physical disability
(a) Procedure
(b) Representation by counsel
(c) Medical privilege
8.14. Involuntary retirement
(a) Procedure
(b) Effect of involuntary retirement
8.15. Advisory Opinions
(a) Rendering Opinions
(b) Who May Request; Types of Opinions
(i) Informal Written Opinions
(ii) Formal Written Opinions
(iii) Discussions
(c) Use and Effect
(d) Modification
8.16. Effect of Hawaiʻi Electronic Filing and Service Rules

Rule 9. TIME LIMITS FOR DISPOSITION

Rule 10. LAWYERS' FUND FOR CLIENT PROTECTION
10.1. Purpose; trustees; administration
(a) Purpose; definition of "dishonest conduct"
(b) Appointment of trustees
(c) Organization; meetings
(d) Rules
(e) Reimbursement
10.2. Deleted
10.3. Payment of claims
(a) Eligible claims
(b) Nonreimbursable losses
(c) Discretion of trustees
(d) Consideration of trustees
(e) Limitation on payments
(f) Rights to fund
(g) Conditions of payment
(h) Attorney's fee
(i) Investments
10.4. Powers and duties of the trustees

10.5. Claims for reimbursement
(a) Application
(b) Investigation
(c) Report
(d) Action by trustees upon report
(e) Notice of determination
10.6. Subpoenas; noncompliance
10.7. Subrogation for reimbursement made
(a) Subrogation; legal action by Fund
(b) Direct action by claimant
(c) Claimant's right to amounts in excess of subrogated amount
(d) Written agreement by claimant prior to receipt of payments
10.8. Confidentiality
(a) General rules of confidentiality
(b) Exchange of information and sharing of investigative and administrative resources with Disciplinary Board
(c) Communication with the claimant and the attorney claimed against
(d) Public statements by trustees
10.9. Immunity
10.10. Automatic suspension

Rule 11. INTEREST-BEARING TRUST ACCOUNTS PROGRAM
(a) Purpose
(b) Required participation
(c) Administration
(1) Deposits of clients' funds
(2) IOLTA trust accounts
(3) Non-IOLTA client trust accounts
(d) Use of funds derived from IOLTA trust accounts
(e) Exemptions
(f) Attorney filings and records
(1) Attorney filings
(2) Records
(g) Rules and Policies of the Hawaiʻi Justice Foundation
(h) Implementation

Rule 12. SUPREME COURT LAW LIBRARY
(a) Availability
(b) Regulations
(c) Withdrawals
(d) Penalties

Rule 13. REPEALED

Rule 14. LICENSING OF FOREIGN LAW CONSULTANTS
14.1. Eligibility
14.2. Applications
14.3. Hardship waiver
14.4. Scope of practice
14.5. Jurisdiction and Requirements

Rule 15. JUDICIAL FINANCIAL DISCLOSURE
(a) Filing of annual financial disclosure statement
(b) Time for filing
(1) Extensions of Time
(2) Monitoring by Chief Clerk
(c) Imposition of discipline for untimely or incomplete statements
(d) Matters to be disclosed
(e) Disclosure of amounts by range; number of stock shares
(f) Short form statement
(g) Statements open to public inspection
(h) Filing of statement not to limit ethical responsibilities of a judge

Rule 16. ATTORNEYS AND JUDGES ASSISTANCE PROGRAM
16.1. Purpose; scope
16.2. Attorneys and Judges Assistance Program Board
16.3. The director
16.4. Voluntary program
16.5. Intervention program
16.6. Confidentiality; privilege not to disclose
16.7. Immunity
16.8. Deleted

Rule 17. THE HAWAIʻI STATE BAR
(a) Creation, name and status
(b) Purposes and powers
(c) Membership and classes of members
(d) Member registration, information, assessment, suspension and status
(1) Member registration
(2) Information to Disciplinary Counsel
(3) Dues, fees and charges
(A) Hawaiʻi State Bar dues
(B) Disciplinary Board fee
(C) Lawyers' Fund for Client Protection fee
(D) Attorneys and Judges Assistance Program fee

(4) Administrative suspension
(A) Failure to file, cooperate with an audit, or pay
(B) Failure to meet CLE requirements; notice of noncompliance; subsequent acquisition of hours; contest; suspension
(5) Reinstatement
(A) After failure to file or pay
(B) After failure to comply with CLE requirements
(C) Review by supreme court
(6) Exemptions
(A) Judges' exemption
(B) Government attorneys' exemption
(C) "Inactive" members' exemption
(7) Proof of payment
(8) Inactive status
(9) Return from voluntary inactive status
(e) Composition, powers and responsibilities of governing body
(f) Powers and responsibilities of governing body
(g) Adoption and amendment of rules regarding Bar
17.1. Child support enforcement
(a) Suspension of license to practice law
(b) Reinstatement to practice
(c) Fee assessment

Rule 18. CALENDAR CONFLICTS BETWEEN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAIʻI AND HAWAIʻI STATE COURTS
(a) Counsel's duty to notify the courts
(b) Resolution of scheduling conflicts

Rule 19. JUDICIAL PERFORMANCE PROGRAM
19.1. Purposes of Judicial Performance Program
19.2. Jurisdiction
19.3. Special committee to implement and administer the program
19.4. Judicial performance evaluation criteria
19.5. Confidentiality
(a) Respondent confidentiality
(b) Confidentiality of information and data
(c) Furnishing of information and data to the judicial selection commission
(d) Furnishing of summary to the evaluated judge
19.6. Immunity
19.7. Effective date

Rule 20. ***PRO BONO PUBLICUS* ATTORNEY**
(a) Purpose
(b) Waiver of active fees, dues and charges
(c) Definitions
(d) Limitations
(e) Duties of qualified legal services provider

Rule 21. **ACCESS TO JUSTICE COMMISSION**
(a) Creation
(b) Purpose
(c) Membership
(1) Number of Members and Terms of Office
(2) Vacancies
(3) Appointment of Members
(4) Community Wide Representation
(d) Officers
(e) Bylaws, Rules and Procedures
(f) Committees and Task Forces
(g) Meetings, Quorum, and Voting
(h) Staff and Funding Support
(i) Recommendations
(j) Reports and Review
(1) Annual Reports
(2) Three-year Review

Rule 22. **MANDATORY CONTINUING LEGAL EDUCATION**
(a) Mandatory Continuing Legal Education
(b) Ethics and Professional Responsibility Minimum
(c) Carry Forward of Credit Hours
(d) Mandatory Certification, Reporting, and Record Keeping
(e) Courses and Activities
(f) Approved Courses or Activities
(g) Approval and Accreditation Authorization
(h) Full-time Judges
(i) Inactive members
(j) Newly licensed members
(k) Good Cause Exemption or Modification

Appendix A. **Rules & Regulations Concerning the Lawyers' Fund for Client Protection of the Supreme Court of Hawaiʻi**

Exhibit A. **Hawaiʻi Rules of Professional Conduct**

Exhibit B. **Hawaiʻi Revised Code of Judicial Conduct**

[This page intentionally left blank.]

Rule 1. ADMISSION TO THE BAR.

1.1. Authority of Hawai'i Supreme Court.

The Hawai'i Supreme Court (Supreme Court) shall appoint a Board of Examiners (Board) to administer the process of admission to the bar of the state. Nothing in this rule, however, shall be construed to alter or limit the ultimate authority of the Supreme Court to oversee and control the privilege of the practice of law in this state.

1.2. Board of Examiners.

(a) Composition and Reimbursement. Members of the Board shall be appointed for staggered three-year terms by the Supreme Court from nominations submitted by the Nominating Committee of the Hawai'i Supreme Court. Members of the Board shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(b) Officers of the Board. The Supreme Court shall appoint a chairperson and vice-chairperson of the Board from its members. The Clerk of the Supreme Court (Clerk) shall be the secretary to the Board and the Clerk's office shall furnish administrative and clerical assistance to the Board.

(c) Duties. The Board shall examine the qualifications of each applicant, his or her knowledge of legal ethics, and his or her moral character, and shall administer a written examination. The record of the examination shall be filed with the Clerk and the Board shall report its recommendations to the Supreme Court which shall make the final decision for all admissions to the bar.

(d) Governance. The Board shall promulgate procedural rules within the scope of its powers and authority, subject to the approval of the Supreme Court. All decisions of the Board shall be made in accordance with the procedural rules promulgated by the Board. The chairperson of the Board may appoint committees and subcommittees to assist the Board in fulfilling its responsibilities under this rule. The Board may delegate its authority to act to the chairperson, or to its committees or subcommittees, provided that a majority of the members of the Board concurs with the delegation of authority.

(*Amended April 8, 2002, effective July 1, 2002.*)

1.3. Requirements for admission.

(a) Applications.

(1) Each applicant for admission to the bar shall file either:

(i) a verified, typewritten or machine printed application with the Clerk on the forms furnished by the Board in accordance with Board's Rules of Procedure or

(ii) a completed electronic application through the Judiciary Electronic Filing System.

(2) At a minimum, the forms shall require the applicant to submit:

(i) his or her name and date of birth,

(ii) his or her last place of residence,

(iii) the character and term of his or her study,

(iv) the institution of law from which he or she graduated and with what degree,

(v) the names of all courts to which he or she has made applications to practice,

(vi) the dates of applications to practice,

(vii) the dates of examinations and the dates of admission to practice,

(viii) whether he or she has been the subject of any investigation or proceeding for professional misconduct,

(ix) whether he or she has ever been rejected upon an application to practice before any court, and

(x) information required by the Board that relates to the applicant's character and fitness to practice law.

(b) Legal Education or Experience Requirements.

(1) Unless otherwise provided by this rule, to be eligible for examination and admission to the bar, each applicant shall have graduated from a law school accredited by the Council of the American Bar Association on Legal Education and Admission to the Bar (accredited law school) with a J.D. or L.L.B. degree. The applicant shall have his or her first professional legal degree (J.D. or L.L.B.) from an accredited law school to satisfy the legal education requirement. A graduate degree in law (L.L.M., M.C.L., S.J.D.) is not a satisfactory substitute for the J.D. or L.L.B. degree.

(2) An attorney who is not a graduate of an accredited law school but who is admitted to practice before the highest court of another state, a territory, or the District of Columbia, shall be eligible for examination and admission, provided that he or she

has actively practiced law in such state, territory or the District of Columbia for five of the six years immediately preceding his or her application.

(3) An attorney admitted to practice and is in good standing before the highest court of a foreign country, where the English common law substantially forms the basis of that country's jurisprudence, and where English is the language of instruction and practice in the courts of that jurisdiction, shall be eligible for examination and admission provided he or she presents satisfactory proof that he or she has actively practiced law in such jurisdiction for five of the six years immediately preceding his or her application.

(4) Service as a judge of a court of record shall be considered equivalent to the active practice of law within the meaning of this rule.

(5) GOOD STANDING IN FOREIGN JURISDICTION. An applicant shall not be allowed to sit for the examination or be admitted to the Hawaiʻi bar during any period in which the applicant is suspended or disbarred or allowed to practice only with supervision in any other jurisdiction. For purposes of these rules a resignation in lieu of discipline is a disbarment.

(c) Good Character and Fitness.

(1) STANDARD OF CHARACTER AND FITNESS. A lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a deficiency in:

(i) honesty,
(ii) trustworthiness,
(iii) diligence,
(iv) reliability,
(v) financial responsibility,
(vi) professional responsibility, or
(vii) respect for the law

shall be grounds for denying an application.

(2) BURDEN OF PROVING CHARACTER. The burden of proving good character and fitness is on the applicant.

(3) RESOLUTION OF CHARACTER AND FITNESS ISSUES. The supreme court may refuse to allow an applicant to sit for an examination pending resolution of character or fitness issues and may refuse to release or consider examination results until character and fitness issues are resolved.

(d) Investigation of Applications. The Board, any delegated committee, or designee shall investigate the applications, and may inquire into the information included in, and relevant to, each application. The Board may conduct proceedings necessary for a full and fair review of each application in accordance with its Rules of Procedure. The Clerk may issue subpoenas to compel the attendance of witnesses or the production of documents or other information in connection with such proceedings. An application may be held in abeyance by the Board pending the receipt of additional information to complete the investigation. If an applicant refuses or is unable to provide additional requested information, the recommendation to the Supreme Court shall be made on the basis of the existing information. The Board, any delegated committee, or designee shall report the results of the investigation and recommendations to the Supreme Court.

(e) Review of Adverse Recommendations as to Good Character and Fitness. An applicant may petition the Supreme Court for review of an adverse recommendation that is based upon the applicant's failure to establish good character and fitness by filing with the Clerk a petition for review within twenty (20) days after receiving the adverse recommendation relating to character and fitness.

(f) Non-Standard Testing Accommodations. An applicant may file a request for non-standard testing accommodations with the Board in accordance with the Board's Rules of Procedure.

(g) Examinations.

(1) Unless otherwise provided by this rule, an applicant shall be admitted to practice only after he or she has passed examinations that satisfy the supreme court that the applicant has the necessary legal and educational qualifications to practice law in this jurisdiction.

(2) Hawaiʻi Bar Examinations will be held in the City and County of Honolulu, Hawaiʻi.

(3) Unless otherwise directed by the supreme court, the Hawaiʻi Bar Examinations will be held during the week of the last Wednesday of February and July.

(4) Within thirty (30) days after the results of the Hawai‘i Bar Examination are filed by the Supreme Court, the Clerk may transmit a copy of examination scores to any unsuccessful applicant. However, there shall be no right of appeal as to the examination or its results.

(5) Unless otherwise ordered by the supreme court, the files, records and proceedings of the Board are confidential and may not be disclosed except in furtherance of the Board's duties under this rule; provided that the Board may, without a court order, release files and records at the request of an attorney admission, or disciplinary authority or judicial selection authority of any jurisdiction in which the applicant is admitted to practice or seeks to practice and provided further that the names of applicants shall not be confidential. The Board or the court may post the names of all applicants, including former names and aliases, and seek comment about the applicants.

(6) In addition to the Hawai‘i Bar Examination administered by the Board, each applicant for examination and admission must also take and pass the Multistate Professional Responsibility Examination (MPRE). The MPRE must be taken and passed not earlier than two years before the Hawai‘i Bar Examination and the MPRE score must be officially reported to the Board not later than one year after date of notification of passing the Hawai‘i Bar Examination.

(h) Child Support Enforcement. An applicant shall not be allowed to sit for a Hawai‘i Bar Examination or be admitted to the Hawai‘i Bar during any period in which the applicant has not complied with a court order for child support or in which Hawaii's Child Support Enforcement Agency or like body in another jurisdiction has certified the applicant is not in compliance with an order of child support or is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding.

(i) Student Loan Enforcement. An applicant shall not be allowed to sit for a Hawai‘i Bar Examination or be admitted to the Hawai‘i Bar during any period in which the applicant is not in compliance with an obligation under a student loan, student loan repayment contract, scholarship contract, or repayment plan.

(*Amended effective September 27, 1996; further amended January 5, 1998, effective January 1, 1998; further amended August 14, 2003, and corrected September 29, 2003, effective January 1, 2004; further amended December 7, 2005, effective January 1, 2006; further amended August 30, 2010; effective September 27, 2010.*)

1.4. Fees

(a) Each applicant shall pay to the Clerk a filing fee with his or her application in such amount as may be determined by the Supreme Court.

(b) A successful applicant shall pay any additional fee as may be determined by the Supreme Court for the applicant's certificate of admission to the bar.

(c) Upon request the Clerk of the Court may issue a replacement certificate of admission to the bar. The fee for the replacement certificate shall be in such amount as may be determined by the Supreme Court.

(d) The cost of a character report from the National Conference of Bar Examiners, if required, shall be borne by the applicant; except that the uniformed service judge advocate seeking limited admission pursuant to Rule 1.7 shall not be required to submit a character report.

(e) The Board shall prepare an annual budget for the expenditure of those funds; shall develop appropriate financial policies for the management of such funds; shall have exclusive control and responsibility over all financial transactions involving such funds; and shall develop and maintain accounting records showing receipt and disposition of such funds, which records shall be subject to audit.

(*Amended November 17, 1995, effective March 18, 1996; further amended effective February 27, 1997; further amended April 18, 2011, effective July 1, 2011.*)

1.5. Oath and admission.

(a) Deadline for Admissions.

(1) Any applicant who has not been admitted to the bar within one (1) year after the order granting issuance of licenses has been filed in the Supreme Court will be subject to the entire admissions process, including the passing of the bar exam, before the applicant will be considered again for admission to the bar. As to any applicant who became eligible for admission prior to 1995, such applicant shall have one (1) year from the date of the letter of notification, described below, from the Clerk of the Supreme Court in which to become admitted to the bar.

(2) As soon as practicable following the effective date of this rule, the Clerk of the Supreme Court shall transmit to each applicant who became eligible for admission prior to 1995 a written notice informing such applicant of the one-year deadline for admission. The notice shall be mailed via certified mail to the most current address shown in the applicant's bar application file. The applicant shall have one (1) year from the date indicated on the return receipt, showing either the date of receipt or the date of return of the letter unclaimed, in which to comply with all requirements for admission to the bar.

(3) The application is of a continuing nature and must be correct as of the date of admission to the bar.

(b) Upon compliance with the requirements of this rule and upon taking the prescribed oath of office, the applicant shall be admitted to the bar.

(c) The oath of office to be taken and subscribed by each attorney shall be as follows:

Supreme Court of Hawai‘i

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai‘i, and that I will at all times conduct myself in accordance with the Hawai‘i Rules of Professional Conduct.

As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.

I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.

1.6. Attorney's license, form of.

(a) The license to be given to an attorney shall be in the following form:

Supreme Court of Hawai‘i

_____ , having been examined and found to be of good moral character and to possess the necessary legal and educational qualifications, is hereby licensed to practice in all the courts of the State of Hawai‘i as an attorney, counselor and solicitor during good behavior.

Given under the seal of the Supreme Court, this _____ day of _____, 20___ .

FOR THE COURT:

Chief Justice

(b) A replacement license shall be in the following form:

Supreme Court of Hawai‘i

_____ , was examined and found to be of good moral character and to possess the necessary legal and educational qualifications and licensed to practice in all the courts of the State of Hawai‘i as an attorney, counselor and solicitor on _____.

This replacement certificate is given under the seal of the Supreme Court, this ____ day of _____, 20___.

FOR THE COURT:

Chief Justice

(*Amended effective February 27, 1997.*)

1.7. Limited admission of military attorneys.

(a) Full-time active duty officers. A full-time active duty military officer serving in the office of the Staff Judge Advocate of the United States Army, Air Force, Navy, Marines, or Coast Guard or in the Naval Legal Service Office (hereafter "uniformed service judge advocate"), who has been admitted to practice by the highest court of another state, the District of Columbia, or a territory of the United States, whose license to practice in that jurisdiction is active, and who is a graduate of a law school approved by the American Bar Association Council on Legal Education and Admissions to the Bar may apply for limited admission and be accorded limited admission without examination. In all other respects the application shall be made adjudged, and conditioned as provided by Rules 1.3(a), (b), (c), (d), (e), (h) and (i), 1.4 and 1.5 of this Rule 1.

(b) Term limitation; extensions. The term of admission under this rule shall be limited to a period of 4 years. The term may be extended one time at the request of the Staff Judge Advocate or the Commanding Officer, Naval Legal Service Office, provided the uniformed service judge advocate has not been disciplined under Rule 2 of these rules. The license shall expire at the end of the 4 year term or any extension thereof or when the uniformed service judge advocate admitted under this Rule 1.7 ends active duty service in Hawaiʻi. The license admitting such uniform service judge advocate shall be in the form provided by Rule 1.6 herein, except that the words "engage in limited military" shall be inserted between the words "to" and "practice" in the phrase ". . . hereby licensed to practice in all the courts of the State . . ." so that the phrase reads ". . . hereby licensed to engage in limited military practice in all the courts of the State. . . ."

(c) Client and compensation limitation. Uniform service judge advocates admitted pursuant to this Rule 1.7 may represent only active duty military personnel in enlisted grades E-1 through E-5 and their dependents to the extent such representation is permitted by the Staff Judge Advocate or the Commanding Officer, Naval Legal Service Office. Uniformed service judge advocates admitted pursuant to this Rule 1.7 may not demand or receive any compensation from clients in addition to usual military pay already received.

(d) Discipline; dues. Uniform service judge advocates admitted pursuant to this Rule 1.7 shall be subject to discipline under Rule 2, Rules of the Supreme Court of the State of Hawaiʻi, may claim to be employed full-time by the United States Government for purposes of assessment of dues and fees, and shall be required to pay dues, fees, and charges imposed on bar applicants and attorneys licensed to practice law in the State of Hawaiʻi, except the character check from the National Conference of Bar Examiners shall not be required.

(Amended April 18, 2011, effective July 1, 2011.)

1.8. Law school faculty members; *Pro tem* membership.

(a) A full-time member of the University of Hawaiʻi Law School (Law School) faculty who has graduated from an accredited law school and who has been admitted to practice in the highest court of another state or territory of the United States or the District of Columbia may apply for admission and be admitted to the bar without examination. In all other respects his or her application shall be made, adjudged and conditioned pursuant to Rules 1.3(a), (c), (d), (e), (h), (i), 1.4, and 1.5 of these Rules, provided that if admission is granted without examination, the term of admission shall be limited to a period of 3 years during which the individual shall have all rights and obligations of a full member of the bar and shall be a *pro tem* member.

(b) At the end of such *pro tem* membership, the Dean of the Law School may, upon motion and affidavit, certify that the individual has continued as a full-time member of the Law School faculty during the period of pro tem membership and has complied with all other applicable rules governing the practice of law. The Board may grant such individual admission to the bar without limitation of time unless found to have become disqualified pursuant to Rule 2 of these Rules.

(c) The fees for application and certificate of admission shall be assessed and paid on application to pro tem membership.

(d) The fees determined under Rule 17(d) (3) of these Rules, shall be assessed and paid from and after admission to the bar without limitation of time.

(*Amended October 16, 2007, effective December 1, 2007; further amended May 14, 2015, effective July 1, 2015.)*

1.9. *Pro hac vice* appearance of counsel.

(a) Any attorney actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia who is not a resident of Hawai‘i may be permitted to associate himself or herself with a member or members of the Hawai‘i bar (local counsel) in the presentation of a specific case at the discretion of the presiding judge or judges. The petition or motion for *pro hac vice* appearance and any subsequent documents submitted on behalf of a party must be filed by local counsel and must comply with subsection (b) of this Rule. An attorney allowed to appear *pro hac vice* in a case may continue on appeal or upon remand in the same case without filing a new petition or motion for *pro hac vice* admission so long as the attorney complies with all applicable Hawai‘i statutes, laws, and rules of the court in addition to other provisions of this Rule.

An attorney allowed to appear *pro hac vice* shall, for each year the order is effective, pay to the Hawai‘i State Bar an annual Disciplinary Board fee authorized by the supreme court, provided that if the attorney is allowed to appear in more than one case, only one fee shall be paid. The Hawai‘i State Bar may assess a reasonable fee to register and collect this fee on an annual basis.

Failure to file proof of such payment in the record within 10 days after entry of the order and in January of each subsequent year in the court in which the case is then pending voids the order allowing the appearance *pro hac vice*, and a new petition or motion for *pro hac vice* appearance must be filed.

(b) Local counsel shall file the petition or motion for *pro hac vice* appearance and the petition or motion shall be supported by:

(1) the declaration of local counsel that provides, at minimum, the following:

(A) local counsel’s business address and address for service of documents; and

(B) affirmation that local counsel understands he or she is the attorney of record and is responsible for all phases of the litigation;

(2) the declaration of the applicant for *pro hac vice* admission that provides, at minimum, the following:

(A) the applicant’s business address, the name of the law firm the attorney is associated with and the address of the law firm;

(B) every state and federal jurisdiction to which the applicant has been admitted to practice law and a statement attesting that the attorney is in good standing in those jurisdictions;

(C) any and all disciplinary proceedings in which the applicant was disciplined, any pending disciplinary proceedings against the applicant, or a statement, if applicable, that the applicant has never been the subject of any disciplinary proceeding;

(D) the title and case number of each case and court in this State in which the applicant has been allowed to appear *pro hac vice* and the present status of each case; and

(E) an affirmation that, if admitted, the applicant will comply with all applicable Hawai‘i statutes, laws, and rules of the courts including the Hawai‘i Rules of Professional Conduct and Guidelines of Professional Courtesy and Civility for Hawai‘i Lawyers.

(F) an affirmation that, if admitted, the applicant understands that he or she is subject to all applicable Hawai‘i statutes, laws, rules of the court, and the Hawai‘i disciplinary process with respect to any acts or omissions occurring during representation pursuant to this Rule.

(c) An attorney allowed to appear *pro hac vice* pursuant to this Rule is subject to the jurisdiction of Hawai‘i courts with respect to all applicable Hawai‘i statutes, laws, and rules of the courts to the same extent as any other attorney admitted to practice in the courts of this state. The attorney allowed to appear *pro hac vice* is subject to the disciplinary jurisdiction of the Supreme Court of Hawai‘i. The court in which an attorney is allowed to appear *pro hac vice* or the Supreme Court of Hawai‘i may, for violations of Hawai‘i law, the Hawai‘i Rules of Professional Conduct, or orders of the court, revoke the permission for the attorney to appear *pro hac vice*, or impose any other appropriate sanction.

(d) Local counsel of record shall sign all pleadings, motions, briefs, or any other documents submitted in the case, and shall participate actively in all phases of the case and be prepared to go forward with the case as required. Service of all papers and pleadings shall be upon local counsel, and shall constitute service upon *pro hac vice* counsel and their client(s).

(e) Local counsel shall provide to the Hawai‘i State Bar Association a copy of the order allowing the appearance of counsel *pro hac vice* and shall

notify the Hawai‘i State Bar Association when the case is closed or the order granting *pro hac vice* admission is no longer valid.

(*Amended September 5, 1996, effective October 1, 1996; further amended October 21, 1996, effective October 1, 1996; further amended and effective October 27, 1997; further amended July 25, 2007, effective January 1, 2008; further amended August 30, 2010, effective September 27, 2010; further amended May 14, 2015, effective July 1, 2015.)*

1.10. Resignation from the bar while in good standing.

(a) An attorney who is not the subject of a disciplinary investigation, proceeding, or order in any jurisdiction; who is not the subject of a disciplinary order issued by Disciplinary Counsel, the Disciplinary Board, or the Supreme Court; who is not the subject of a pending investigation or right of subrogation on a claim filed with the Lawyers' Fund for Client Protection; and who is otherwise in good standing may petition to resign and surrender his or her license to practice law.

(b) The Petition to Resign and Surrender License (Petition) shall be filed with the Clerk, upon the payment of the filing fee for an original action.

(c) The Petition shall be supported by (i) the petitioner's affidavit attesting to the fact the petitioner is not the subject of a disciplinary investigation, proceeding, or order in any jurisdiction; (ii) an affidavit of the Executive Director of the Hawai‘i State Bar attesting to the petitioner's current status; (iii) Disciplinary Counsel's affidavit attesting to the fact the petitioner is not the subject of a pending disciplinary investigation, proceeding, or order in Hawai‘i; and (iv) an affidavit of the Executive Director of the Lawyers' Fund for Client Protection attesting that no claims against the petitioner have been made or are pending with the Lawyers' Fund for Client Protection.

(d) The Petition shall be served in person or by certified mail upon Disciplinary Counsel, the Hawai‘i State Bar Association, and the Lawyers' Fund for Client Protection at or before the time it is filed with the Clerk.

(e) Within ten (10) days after the Petition is filed, Disciplinary Counsel may file objections thereto.

(f) The Supreme Court shall consider the Petition and any objections thereto and shall issue an appropriate order.

(g) Attorneys who have been allowed to resign shall comply with the notice, affidavit, and record requirements of Rule 2.16(a), (b), (d), and (g), RSCH.

(*Amended effective August 1, 1998.*)

1.11. Readmission after resignation.

An attorney who has resigned in good standing may be readmitted to the bar upon satisfying the same requirements as an initial applicant as provided in this Rule 1.

1.12. Immunity.

(a) The Board, its members, employees, and agents are immune from all civil liability for conduct and communications occurring in the performance of their official duties, and civil suits predicated thereon may not be instituted.

This page intentionally left blank.

(b) Records, statements of opinion, and other information regarding an applicant for admission to the bar, communicated by any entity, including a person, firm, or institution, without malice, to the Board or to its members, employees, or agents are privileged, and civil suits predicated thereon may not be instituted.

COMMENT:

This immunity rule is patterned from a model immunity rule adopted by the House of Delegates of the American Bar Association. Part (a) of the rule provides absolute immunity from civil liability to members of the Board of Law Examiners, employees of the Board, and agents of the Board in the performance of their official duties. Part (b) of the rule grants immunity to those who provide information about an applicant as long as the information is provided "without malice." The purpose of part (b) is to encourage and protect the reporting of truthful information and candid evaluation. Intentional reporting of false information, without just cause, excuse, or justification, is not protected.

(*Amended January 8, 1981, effective January 8, 1981; further amended January 23, 1981, and February 3, 1981, effective January 23, 1981; renumbered September 1984; further amended February 27, 1985, effective February 27, 1985; further amended October 23, 1985, effective October 23, 1985; further amended February 13, 1987, effective February 13, 1987; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended August 1, 1990, effective August 1, 1990; further amended September 28, 1990, effective September 28, 1990; further amended February 7, 1992, effective February 7, 1992; further amended May 14, 1993, effective May 14, 1993; further amended August 1, 1994, effective August 1, 1994; further amended February 6, 1995, effective February 6, 1995; further amended July 1, 1999.*)

1.13. Specialization.

(a) Petition for Certificate of Specialization. Upon successful completion of a program of study accredited by the American Bar Association (ABA) for certification as a specialist in a subject of the law, an active Hawaiʻi lawyer in good standing may petition the court for a Hawaiʻi Certificate of Specialization in that subject of the law.

(b) Contents of Petition. The Petition shall be verified and shall state (i) the date the Petitioner was admitted to practice in Hawaiʻi, (ii) Petitioner's Hawaiʻi attorney identification number, (iii) Petitioner's current office address and telephone number, (iv) the nature of the ABA accredited program of study (including the requirements thereof), and (v) the date the Petitioner was certified by the ABA accredited program. Petitioner shall attach to the Petition (1) a copy of Petitioner's Hawaiʻi license to practice law, (2) and affidavit or declaration from the Executive Director of the Hawaiʻi State Bar Association stating the Petitioner is in good standing with the Hawaiʻi Bar, (3) an affidavit or declaration from Disciplinary Counsel stating that Petitioner is not currently suspended or disbarred and that no disciplinary matters against Petitioner are pending, (4) an affidavit or declaration from the administrator of the Lawyers' Fund for Client Protection stating there are no pending claims against the Petitioner and the Petitioner owes no reimbursement to the Lawyers' Fund for Client Protection, and (5) a copy of the specialist certificate issued by the ABA accredited specialization program. Petitioner is responsible for preparing all affidavits or declarations for signature.

(c) Nature of Proceeding; Filing Fee. The Petition for Certificate of Specialization shall be docketed as an original proceeding and the Clerk shall assess and collect the filing fee for an original proceeding.

(d) Form of Certificate. Upon approval by the court and Petitioner's payment of a $25.00 certification fee, the Clerk shall issue a five-year specialization certificate in the following form:

No. _____
Supreme Court of Hawai‘i

CERTIFICATE OF SPECIALIZATION

[Petitioner's Name] having Petitioned for Specialty Certification in [law subject], having successfully completed the American Bar Association accredited program prescribed for such specialization, having been found to be a lawyer in good standing in the State of Hawai‘i, and having met the requirements for such certification, is hereby Certified as a Specialist in [law subject] in the State of Hawai‘i.

This Certificate expires on _____.

Given under the seal of the Supreme Court, this _____ day of _____, 20 ____.

FOR THE COURT:

Chief Justice

(e) Limitations. No lawyer admitted to practice law in this jurisdiction shall be required to be certified as a specialist to practice in any field of law. Specialty certification neither increases nor decreases a lawyer's duties to the lawyer's clients, the courts, and the profession.

(f) Revocation of Certification. A Certificate of Specialization is automatically revoked upon the suspension or disbarment of the lawyer so certified.

(g) Renewal. The Certificate of Specialization may be renewed, without limitation, for periods of five (5) years upon the filing of a Petition for Renewal of Specialty Certification. A Petition for Renewal must be supported by proof Petitioner has completed at least six (6) hours of ABA accredited Continuing Legal Education courses in the subject area for each of the five years preceding the application for renewal, has maintained certification by the ABA accredited program by which certification was initially granted, remains an active member in good standing of the Hawai‘i Bar, and has not been disciplined by this court or the Disciplinary Board during the previous five (5) year period. A Petition for Renewal shall be filed as an original petition and the Clerk shall assess and collect the fee for such filing. Upon entry of an order granting the Petition for Renewal, the Clerk shall issue a certificate as provided by subsection (d) of this Rule 1.13.

(*Added effective July 1, 1999.*)

1.14. Mandatory professionalism course.

(a) Professionalism Course. Each person licensed to practice law after July 1, 2001, shall, no later than December 31 of the year following the year of election of active status, complete the Hawai‘i Professionalism course conducted under the joint sponsorship of the Hawai‘i State Bar and the Supreme Court of Hawai‘i. This rule applies to every license issued after July 1, 2001, pursuant to any part of Rule 1 of the Rules of the Supreme Court of the State of Hawai‘i, except Rules 1.9 and 1.13. The required Hawai‘i Professionalism course is separate and distinct from other Mandatory Continuing Professional Education programs available through the Hawai‘i State Bar or other legal ethics associations and is traditionally offered only bi-annually, in November and June. The Hawai‘i State Bar shall notify attorneys facing administrative suspension pursuant to section (c) of this rule, 1 month prior to the final opportunity to complete the professionalism course, of the attorney’s impending administrative suspension. Failure to notify an attorney shall not, however, constitute grounds upon which the attorney may contest the imposition of administrative suspension.

(b) Proof of Compliance. Proof of compliance shall be in accordance with procedures established by the Hawai‘i State Bar.

(c) Administrative Suspension. Failure to complete the professionalism course within the time period specified above in (a) shall result in automatic suspension of the license to practice law. The Hawai‘i State Bar shall give written notice of the suspension, but failure to give notice will not justify or excuse practicing while suspended.

(d) Reinstatement. An attorney suspended under paragraph (c) shall be reinstated upon proof of completion of the course.

(e) Fees. The Hawai'i State Bar may assess and collect reasonable fees for attending the course, for providing notice of suspension, and for processing reinstatement requests.

(*Added July 17, 2001, effective nunc pro tunc July 1, 2001; amended September 19, 2008, effective nunc pro tunc January 1, 2008; further amended May 8, 2012, effective July 1, 2012.*)

1.15. Effect of Hawai'i Electronic Filing and Service Rules.

Documents filed and notices given in accordance with the Hawai'i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice, and service requirements of any part of this Rule 1.

(Added August 30, 2010, effective September 27, 2010.)

1.16. Limited Admission of Attorneys Employed by Non-profit Organizations Providing Civil Legal Services to Economically Disadvantaged Persons.

(a) Employees. An attorney employed by a civil legal service provider recognized by the Internal Revenue Service as a 501(c)(3) non-profit organization ("Legal Service Provider") that is eligible to receive funds from the Indigent Legal Assistance Fund, who has been admitted to practice by the highest court of another state, the District of Columbia, or a territory of the United States, and whose license to practice in that jurisdiction is active and who is a graduate of a law school approved by the American Bar Association Council on Legal Education and Admissions to the Bar may apply for limited admission and be accorded limited admission without examination. In all other respects the application shall be made, adjudged, and conditioned as provided by Rules 1.3(a), (b), (c), (d), (e), (h), (i), 1.4 and 1.5 of this Rule 1.

(b) Term Limitation; Extensions. The term of admission under this Rule 1.16 shall be limited to a period of 2 years. The term may be extended one time for a period of 2 years at the request of the Executive Director or highest executive of the Legal Service Provider, provided the attorney has not been disciplined under Rule 2 of these rules. The license given under this Rule 1.16 shall expire at the end of the term or any extension thereof, when the attorney admitted under this Rule 1.16 ends employment with the Legal Service Provider, or when the Legal Service Provider ceases to be eligible to receive funds from the Indigent Legal Assistance Fund, whichever occurs earliest. The license admitting such employee shall be in the form provided by Rule 1.6. If an attorney admitted under this rule separates from his or her employment with the Legal Service Provider, or if the status of the Legal Service Provider changes so that it is not eligible to receive funds from the Indigent Legal Assistance Fund, then both the attorney and the Legal Service Provider shall immediately notify the Clerk of the Supreme Court and the attorney shall immediately cease and desist from the practice of law in the State of Hawai'i.

(c) Client and Compensation Limitation. Attorneys admitted pursuant to this Rule 1.16 may represent only clients of the Legal Service Provider. Attorneys admitted pursuant to this Rule 1.16 may not demand or receive any compensation from clients other than the compensation received from the Legal Service Provider.

(d) Discipline; Dues. Attorneys admitted pursuant to this Rule 1.16 shall be subject to discipline under Rule 2, and shall in all other respects be required to pay dues and fees lawfully imposed on attorneys licensed to practice law in the State of Hawai'i. The fees for application and certificate of admission shall be assessed and paid on application for admission under this Rule 1.16. The fees determined under Rule 17(d)(3) shall be assessed and paid from and after admission to the bar without limitation of time.

(Added February 24, 2011, effective July 1, 2011.)

Rule 2. DISCIPLINARY RULES.

2.1. Jurisdiction.

Any attorney admitted to practice law in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the exclusive disciplinary jurisdiction of the supreme court and the Board hereinafter established.

Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any voluntary bar association from censuring a member or suspending or expelling a member from membership in the association.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders*.)

2.2. Grounds for discipline.

(a) The Hawai‘i Rules of Professional Conduct, attached hereto as Exhibit A, shall govern the conduct of all attorneys subject to discipline under this rule.

(b) Acts or omissions by an attorney which violate the Hawai‘i Rules of Professional Conduct shall constitute misconduct and shall be ground for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. Conviction of a crime shall similarly be ground for discipline as set forth in Rule 2.13.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994; further amended November 23, 2007, effective January 1, 2008*.)

2.3. Types of discipline.

(a) Discipline may consist of:

(1) Disbarment by the supreme court; or

(2) Suspension by the supreme court for a period not exceeding five years; or

(3) Public censure by the supreme court; or

(4) Public reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or

(5) Private reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or

(6) Private informal admonition by Disciplinary Counsel or Disciplinary Board.

(b) Where a respondent has, with the written concurrence of the Director of the Attorneys and Judges Assistance Program, proposed a program of monitoring of the respondent's efforts toward rehabilitation from "substance abuse" (as that term is defined in Rule 16.1(a) of these rules), the supreme court or the Board may impose such a monitoring program. The monitoring program, which shall in all cases be supervised by the Director of the Attorneys and Judges Assistance Program, may be in lieu of or in addition to a disciplinary sanction. The duration and conditions of monitoring shall be stated in the final order issued by the supreme court or the Board. Violation of any conditions shall result in the imposition of disciplinary sanctions, but only to the extent set forth in the order establishing the monitoring program.

(c) Restitution and/or payment of costs (exclusive of attorney's fees) may also be ordered by the supreme court or by the Board. Counsel shall file its verified bill of costs within 60 days after imposition of discipline.

(d) As a condition of reinstatement following suspension or disbarment or as a condition in connection with the imposition of any lesser discipline, the Disciplinary Board or the supreme court may require a respondent, at the respondent's expense, to successfully complete (i) the bar examination or some portion of it, (ii) seminars or classes in particular subjects of the law, (iii) a program specifically designated by the Board or the supreme court to meet some deficiency in the attorney's understanding of the law or the practice of it, (iv) a practice management audit, and/or (v) a trust account audit. In addition, the Disciplinary Board or the supreme court may order the return to the client of all unearned fees or funds and unused deposits against future costs. The Board may consult with the Hawai‘i State Bar or others to find or develop such seminars, classes, and programs.

(*Amended July 19, 1981, effective July 29, 1981, renumbered September 1984; amended November 8, 1991, effective November 8, 1991; amended March 8, 1995, effective March 23, 1995; further amended September 5, 1996, effective October 1, 1996; further amended effective March 10, 1998; further amended April 10, 2002, effective July 1, 2002; further*

amended November 23, 2007, effective January 1, 2008.)

2.4. Disciplinary board.

(a) The supreme court shall appoint a board to be known as the "Disciplinary Board of the Hawai‘i Supreme Court" (hereinafter referred to as the "Board") that shall consist of eighteen members, each of whom shall be nominated and appointed separately. At least one-third of the members shall not be lawyers. To the extent possible, membership shall include at least one person from each of the four counties. All appointments shall be made from a list of nominees submitted by the Nominating Committee of the Hawai‘i Supreme Court. The Disciplinary Board shall elect from among its members, a Chairperson, a Vice-Chairperson, a secretary, and a treasurer.

(b) All members shall be appointed to staggered three-year terms; however, to maintain a Board with staggered terms, initial appointments may be for less than three years. The Board shall act only with the concurrence of seven or more members. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(c) Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case, or the orderly operation of the Board, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary. Each ad hoc member shall fulfill all the responsibilities of a Board member.

(d) Periodically, the Chairperson shall designate at least two Board members to review the proposed decisions of the Disciplinary Counsel, as mentioned in subsection 2.7 hereof.

(e) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules.

(2) To employ, supervise, and terminate a Chief Disciplinary Counsel, hereinafter Chief Counsel, a Deputy Chief Disciplinary Counsel, Assistant Disciplinary Counsel, and staff employees, and to appoint volunteers to assist the Board in the exercise of its duties. The Board may delegate to Chief Counsel the authority to employ and supervise the Deputy Chief Counsel and Assistant Counsel, to employ, supervise and terminate staff, and to appoint volunteers.

(3) To appoint Special Assistant Disciplinary Counsel when Chief Disciplinary Counsel and all full time Assistant Disciplinary Counsel are disqualified.

(4) To appoint from time to time, and establish the terms of office of, an appropriate number of persons to serve as hearing committee members and officers.

(5) To approve assignments made annually by the Chairperson for rotation of members of the Board to review for stated periods all recommended dispositions by Counsel and to authorize changes in such assignments from time to time necessitated by unforeseen circumstances.

(6) To adopt rules of procedure governing the Board and hearing committees and officers which are not inconsistent with these rules.

(7) To adopt and publish advisory opinions interpreting the Hawai‘i Rules of Professional Conduct.

(8)(i) To develop an annual budget for operating the Office of Disciplinary Counsel and performing the functions of the Board, to develop appropriate financial policies for managing of all funds received by the Board, and to propose an annual fee;

(ii) to submit, no later than September 15 each year, the developed budget, financial policies, and fee structure to the Hawai‘i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai‘i State Bar prior to submission to the supreme court;

(iii) to receive written comments, if any, from the Hawai‘i State Bar regarding the budget, financial policies, and fee structure;

(iv) to reply in a timely fashion in writing to any written comments from the Hawai‘i State Bar regarding section (iii), provided the comments were received no later than October 15; and

(v) to submit, no later than November 1 each year, the budget, financial policies, and annual fee along with any and all written comments received from the Hawai‘i State Bar, and any replies thereto, to the supreme court for its review and approval.

(9) To receive from the Bar all funds collected by the Bar for the Board, and to have exclusive control and responsibility over all financial transactions; and to develop and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit as directed by the supreme court.

(10) To retain, as needed, private counsel to assist the Board in the performance of its duties.

(11) To establish committees to assist the Board in the performance of its duties.

(*Amended November 20, 1979, effective November 20, 1979; renumbered September 1984; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994; further amended May 11, 1995, effective May 11, 1995; further amended and effective January 9, 1996; amended January 13, 1998, effective February 13, 1998; amended April 8, 2002, effective July 1, 2002; amended May 12, 2003, effective July 1, 2003; further amended November 23, 2007, effective January 1, 2008; further amended June 25, 2013, effective July 1, 2013.*)

2.5. Hearing committees.

(a) Each hearing committee shall consist of three members, at least two of whom shall be members of the bar of this state. A hearing officer shall be a member of the bar of this state. Each hearing committee shall act only with the concurrence of a majority of its members. Hearing committee members and officers shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. Hearing committee members and officers shall receive no compensation for services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(b) Hearing committees and officers shall have the power to conduct hearings in formal disciplinary proceedings and on petitions for reinstatement of disbarred or suspended attorneys, upon assignment by the Chairperson of the Board, and to submit their findings and recommendations, together with the record of the proceeding, to the Board. Hearing committee members and officers may also serve as trustees under Rule 2.20 or may, upon appointment by the Chairperson of the Board, assist said trustees in carrying out their duties.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended August 17, 1993, effective August 17, 1993; further amended and effective January 9, 1996; further amended September 5, 1996, effective October 1, 1996; further amended June 25, 2013, effective July 1, 2013.*)

2.6. Disciplinary counsel.

(a) Private practice not permitted. Chief Counsel, Deputy Chief Counsel, and Assistant Counsel shall not engage in private practice, except that the Board may agree to a reasonable period of transition after appointment.

(b) Powers and duties of Chief Counsel. Chief Counsel shall have the power and duty:

(1) To investigate all matters involving alleged misconduct called to his or her attention whether by complaint or otherwise.

(2) To dispose, subject to review by members of the Board assigned by the Chairperson, of all matters involving alleged misconduct by dismissal, private informal admonition, referral to a minor misconduct or assistance program, or the institution of formal disciplinary proceedings before a hearing committee or officer. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Counsel until the accused attorney shall have been afforded the opportunity to state his or her position with respect to the allegations against him or her.

(3) To file with the supreme court certificates of conviction of attorneys for crimes.

(4) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees or officer, the Board and the supreme court.

(5) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, to examine witnesses and to submit evidence, if any, relevant thereto.

(6) To inform complainants and attorneys complained against of the status and disposition of their respective complaint matters.

(7) To maintain permanent records of all matters processed and the disposition thereof.

(8) To assist members of the public in preparation of requests for investigation.

(9) To perform such other duties and provide such reports as the Board shall direct.

(c) Delegation. Chief Counsel may delegate performance of the duties set out in sections (b)(1) through (b)(9) to Deputy Chief Counsel, Assistant Disciplinary Counsel, and staff.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended August 17, 1993, effective August 17, 1993; further amended and effective January 9, 1996; further amended June 25, 2013, effective July 1, 2013; further amended August 23, 2013, effective August 23, 2013*.)

2.7. Procedure.

(a) Investigation. All investigations, whether upon complaint or otherwise, shall be conducted under the supervision of Counsel. Each investigation shall be confined to the facts of the grievance and matters reasonably related thereto that could be violations of the Hawai‘i Rules of Professional Conduct or other Rules of the Supreme Court that regulate the practice of law. Upon motion, an attorney subject to an investigation may seek protective orders in the first instance from the Board and, if denied, then, within 10 days thereafter from the supreme court. Upon the conclusion of an investigation, Counsel shall recommend dismissal, informal admonition of the attorney concerned, the institution of non-disciplinary proceedings for minor misconduct, or the institution of formal disciplinary proceedings before a hearing committee or officer. Counsel's recommendation shall be reviewed by one of the two members of the Board assigned for that purpose. If the initial reviewing member of the Board approves Counsel's recommendation, it shall be implemented. If the reviewing member of the Board disapproves Counsel's recommendation, Counsel may request further review by the other reviewing member of the Board. In the event of such second review of Counsel's recommendation, the decision by the second reviewing member of the Board shall be final. The member or members of the Board who review Counsel's recommendation shall be disqualified in any formal disciplinary proceedings in relation to the same alleged misconduct.

(b) Minor misconduct.

(1) Notwithstanding the provisions of Rules 2.2 and 2.3, any act or omission by an attorney which, although violative of the Hawai‘i Rules of Professional Conduct, is of a minor nature may be resolved by way of non-disciplinary proceedings or dismissal.

(2) In the absence of unusual circumstances, misconduct shall not be regarded as minor if any of the following conditions exists:

(i) The misconduct involved misappropriation of a client's funds or property.

(ii) The misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person.

(iii) The respondent was publicly disciplined within the past 3 years.

(iv) The misconduct involved is of the same nature as misconduct for which the respondent was disciplined within the past 5 years.

(v) The misconduct included dishonesty, misrepresentation, deceit, or fraud on the part of the respondent.

(vi) The misconduct constituted the commission of a felony under applicable law.

(3) Subject to the provisions of Rule 2.7(a), Counsel shall, in Counsel's sole discretion, exclusively determine whether a matter constitutes minor misconduct. In that event, Counsel may reach agreement with the respondent to submit the matter to non-disciplinary proceedings. Such proceedings may consist of fee arbitration, arbitration, mediation, lawyer practice assistance, substance abuse recovery programs, psychological counseling, mentoring, or

any other non-disciplinary proceedings authorized by the supreme court. Counsel shall then refer the matter to the agency or agencies authorized by the supreme court to conduct the proceedings.

(4) If the respondent enters into an agreement for referral to a minor misconduct program established by the Hawai‘i State Bar and enters into a mentoring relationship, all records and information maintained by the mentor relating to the minor misconduct of the respondent shall be deemed confidential and shall not be disclosed to the Counsel, the Board, the supreme court or any other person and shall not be subject to discovery or subpoena unless such confidentiality is waived in writing by the respondent; provided, however, that the mentor may compile and disclose to Counsel a final report summarizing the mentoring program and the completion thereof to the satisfaction of the mentor. The mentor and the respondent have a privilege to refuse to disclose information shared or provided between the mentor and the respondent. The limitations on disclosure set forth in this section will not apply to information relating to the respondent’s failure to cooperate with the mentoring program, or with a respondent’s unsuccessful completion of a mentoring program.

(5) If Counsel shall fail to reach agreement with the respondent to submit the matter of non-disciplinary proceedings, Counsel may undertake or resume disciplinary proceedings.

(6) If the respondent shall fail to comply with the terms of the agreement, Counsel may undertake or resume disciplinary proceedings.

(7) If the respondent shall fulfill the terms of the agreement, Counsel shall dismiss the disciplinary proceedings.

(c) Formal hearing. Formal disciplinary proceedings shall be instituted by Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent in accordance with Rule 2.11(a). Notwithstanding Rule 2.22, if at the time the petition is served, the respondent is engaged in the act of the practice of law as a part of a firm, partnership, corporation or governmental entity or other group, Counsel shall provide a notice to the respondent's employer of the fact that formal disciplinary proceedings have been filed with the Board. The respondent shall serve his or her answer upon Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Board Chairperson. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer or upon failure to answer, the matter shall, unless the provisions of (e) below apply, be assigned by the Chairperson to a hearing committee or officer. The hearing committee or officer receiving the assignment shall serve a notice of hearing upon Counsel and the respondent, or the respondent's counsel, stating the date, time, and place of the hearing. At every hearing wherein factual issues are to be resolved, the respondent shall have a full opportunity to confront and cross-examine such witnesses presented by Counsel and to present evidence on his or her own behalf. The hearing committee or officer shall, in every case, submit a report containing findings and recommendations, together with a record of the proceedings, to the Board within 30 days after the conclusion of the hearing unless such time is extended by the Board Chairperson for no more than 30 days for good cause shown. The findings of the hearing committee or officer shall be supported by clear and convincing evidence. The hearing committee or officer shall not be bound by the formal rules of evidence, but shall admit only trustworthy evidence. The hearing committee or officer shall not rely upon any evidence outside the formal record in reaching a decision.

(d) Review by Board and Supreme Court. Upon receipt of a report from a hearing committee or officer, the Board will not entertain briefs or oral argument except: (1) within the Board Chairperson's discretion upon application of Counsel or the respondent (submitted within 10 days after service of the report of the hearing committee or officer); or (2) upon a vote of a majority of the Board. If such application is granted or vote occurs, the Board Chairperson shall set the dates for submission of briefs and for any oral argument before the Board. After reviewing the report of the hearing committee or officer, the Board shall promptly either affirm or modify the report of the hearing committee or officer, remand the matter for further proceedings before the hearing committee or officer, or dismiss the petition with the consent of Counsel, provided that no such consent shall be required where the hearing committee or officer recommended dismissal of the petition. In the event the Board determines that the proceeding shall be concluded by informal admonition or private or public reprimand, such admonition or reprimand shall be imposed in accordance with procedures established by the Board.

Unless the Board dismisses the petition with any required consent of Counsel, remands the petition, or concludes the matter by informal admonition or private or public reprimand, the Board shall promptly submit a report containing its findings and recommendations, together with the entire record, to the supreme court. After the filing of such report, a copy thereof shall be served on the parties in accordance with Rule 2.11(b). The supreme court will not entertain briefs or oral argument except: (1) within its discretion upon application of the respondent or Counsel (submitted within 10 days after service of the Board's report); or (2) upon request of the supreme court. If such application is granted or request is made, the supreme court shall set the dates for submission of briefs and for any oral argument before the supreme court. In its discretion, the supreme court may in all disciplinary cases issue and publish written opinions or by per curiam order adopt and publish the findings and conclusions contained in the written report of the Board.

(e) Elimination or suspension of hearing proceedings. All proceedings before the hearing committee or officer shall be eliminated or suspended (1) where the respondent has filed no answer (and the charges have thus been deemed admitted) because, after due and diligent effort by Counsel, the respondent cannot be located for personal service and does not receive registered or certified mail at any of his or her addresses last known to Counsel; or (2) where Counsel and the respondent at any time subsequent to the filing of a petition file with the Board a stipulation setting forth an admission by the respondent of the facts deemed relevant to a determination of the matter, the disciplinary violations which serve as grounds for discipline, and an agreement as to the recommended form of discipline which should be imposed upon the respondent based upon the admitted violations. The entire record in the case shall thereupon be transmitted directly to the Board for review in accordance with (d) above. The parties may request that the record be supplemented by documentary exhibits. In any event, the Board may accept a request by the parties that the submission of briefs and/or oral argument before the Board be waived. In the case of a stipulation filed by the parties, neither the Board nor the supreme court shall be bound to accept the parties' stipulated factual and legal agreements or recommended disposition, and the Board or the supreme court may either decide the matter based upon the factual admissions set forth in the parties' stipulation or may remand the matter for further proceedings before a hearing committee as outlined in (c) above.

(*Amended July 29, 1981, effective July 29, 1981; renumbered September 1984; further amended, March 7, 1986, effective March 7, 1986; further amended September 22, 1988, effective September 22, 1988; further amended July 3, 1989, effective July 3, 1989; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended January 11, 1991, effective January 11, 1991; further amended November 8, 1991, effective November 8, 1991; further amended February 7, 1992, effective February 7, 1992; further amended March 18, 1993, effective March 18, 1993; further amended December 6, 1993, effective January 1, 1994; further amended March 8, 1995, effective March 23, 1995; further amended and effective January 9, 1996; amended effective March 10, 1998; further amended December 10, 2003, effective January 1, 2004; further amended*

November 23, 2007, effective January 1, 2008; further amended April 5, 2010, effective July 1, 2010; further amended March 4, 2013, effective March 4, 2013.)

2.8. Immunity.

Complaints submitted to the Board or Counsel or testimony given with respect thereto or trustee proceedings conducted pursuant to Rule 2.20 shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of the Board, members of the hearing committees, hearing officers, Counsel, counsel to the Board, staff, volunteers, experts appointed pursuant to Rule 2.19, trustees and assistants appointed pursuant to Rules 2.20 and 2.5, and mentors appointed pursuant to Rule 2.7(b)(4) shall be immune from suit and liability for any conduct in the course of their official duties.

COMMENT **:**

The purpose of extending immunity to mentors appointed pursuant to Rule 2.7(b)(3) is to enhance the ability to attract participants to participate as mentors in minor misconduct programs and to provide to these mentors protections provided to those serving in other capacities under the auspices of the Disciplinary Board.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended May 7, 1990, effective May 7, 1990; further amended August 17, 1993, effective August 17, 1993; further amended and effective January 9, 1996; further amended effective August 1, 1998; further amended April 5, 2010, effective July 1, 2010; further amended February 20, 2013, effective July 1, 2013.*)

2.9. Refusal of complainant to proceed, compromise, etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

(*Renumbered September 1984.*)

2.10. Matters involving related pending civil or criminal litigation.

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Board in its discretion, for good cause shown.

(*Renumbered September 1984.*)

2.11. Service.

(a) Service upon the respondent of the petition or order to show cause in any disciplinary, disability, or trustee proceeding shall be made by personal service by any person authorized by the Board Chairperson, except that in the event the respondent cannot be found within the state or has departed therefrom, service shall be made by registered or certified mail at the respondent's address shown in his or her registration statement filed pursuant to Rule 17(d) or other last known address. Service by mail is complete on mailing.

(b) Service of any other papers or notices required by these rules may be personal or by mail. Personal service includes delivery of the copy to an attorney or a responsible person at the attorney's office. Service by mail at the respondent's address shown in his or her registration statement filed pursuant to Rule 17(d) or other last known address is complete on mailing, if mailed by postage prepaid First Class mail or other class of mail that is at least as expeditious.

(*Amended July 29, 1981, effective July 29, 1981; renumbered September 1984; further amended July 3, 1989, effective July 3, 1989; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended effective May 7, 1990; further amended February 7, 1992, effective February 7, 1992; further amended November 23, 2007, effective January 1, 2008; further amended February 12, 2008, effective July 1, 2008.*)

2.12. Power to subpoena respondents and witnesses; pretrial proceedings.

Any member of a hearing committee or any hearing officer, in matters before it or them, and Counsel, in matters under investigation by him or her, may administer oaths and affirmations, and compel by subpoena the attendance of the respondent and witnesses and the production of pertinent books, papers and documents. A respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents before a hearing committee or officer after formal disciplinary proceedings are instituted. Writs of subpoena shall be issued in blank by the clerk of the supreme court upon application by any member of a hearing committee or any hearing officer, Counsel or the respondent. The supreme court may, upon proper application pursuant to HRAP Rule 27, enforce the attendance and testimony of the respondent and may, as set forth in Rule 2.12A, immediately suspend the respondent from the practice of law for the failure to comply with any lawful demand of the supreme court, a hearing committee or officer, or Counsel made in connection with any investigation, hearing, or disciplinary proceeding. Upon application pursuant to HRAP Rule 27, the supreme court may also enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts.

There shall be no discovery proceedings except upon the order of the Board Chairperson for good cause shown.

At the discretion of the hearing committee or officer, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the officer or the chairperson of the committee or any member of the committee designated by its chairperson.

(*Renumbered September 1984; amended April 4, 1988, effective April 4, 1988; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended November 23, 2007, effective January 1, 2008.*)

2.12A. Failure to cooperate.

(a) Grounds for suspension. An attorney who is the subject of an investigation by Counsel, or who is the subject of a disciplinary proceeding pending before a hearing committee or officer, the Disciplinary Board, or the supreme court, may be suspended from the practice of law, pending consideration of the charges against the attorney, upon a finding that the yattorney is guilty of a failure to cooperate with the investigation or disciplinary proceeding. Such a finding shall be based upon the attorney's default in responding to the petition or notice filed by Counsel, or the attorney's failure to submit a written response to pending allegations of professional misconduct, or to comply with any lawful demand of the supreme court, the hearing committees, hearing officers, or Counsel made in connection with any investigation, hearing, or disciplinary proceeding, including failure to comply with a subpoena issued under Rule 2.12.

(b) Petition; order to appear; findings. Upon the filing with the supreme court of a petition approved by the Board Chairperson or his or her designee on the Board, an order shall be issued directing the attorney to appear within ten days of the service of the order, and inform the supreme court as to why the attorney should not be immediately suspended. Service upon the attorney shall be made pursuant to Rule 2.11(a). The suspension shall be made upon the supreme court's finding that the attorney has failed to cooperate, as outlined in (a) above. The supreme court shall briefly state its reasons for its order of suspension, which shall be effective immediately and until further order of the supreme court.

(c) Application to defend. In all cases where the petition described in (b) above is served in any manner other than personally, and the attorney so served does not appear, an application may be made by such attorney to the chief justice at any time within one year after the rendition of the final order of suspension, and upon good cause shown and upon such terms as may be deemed just by the chief justice, such attorney shall be allowed to defend himself against such charges.

(d) Reinstatement. An attorney suspended under this Rule 2.12A may move for reinstatement. The motion shall be supported by proof respondent cured the failures to cooperate alleged in the petition.

If conventionally filed, a copy of the motion for reinstatement shall be served upon Counsel at or before the time of filing. Counsel shall file a response to the motion within 20 days after the motion for reinstatement was filed. Counsel's response shall verify whether respondent has cured the allegations of non-cooperation.

(*Added April 4, 1988, effective April 4, 1988; amended February 7, 1992, effective February 7, 1992; further amended and effective January 9, 1996; further amended November 23, 2007, effective January 1, 2008; further amended June 25, 2013, effective July 1, 2013.*)

2.13. Attorneys convicted of crimes.

(a) Upon learning an attorney has been found guilty of a crime that:

(1) is a felony;

(2) would have been a felony if committed in Hawai'i, or

(3) involves dishonesty or false statement,

Counsel shall obtain proof of the finding of guilt and file it with the Board and with the clerk of the supreme court. For purposes of this rule, a finding of guilt is a verdict or judgment of guilty, a guilty plea, or a no contest plea. Deferred acceptance of a plea, a sentence suspension, or a conditional discharge does not change the definition of guilt for purposes of this rule.

(b) When proof of a finding of guilt is filed with the supreme court, the supreme court shall, unless the interests of justice indicate otherwise, enter an order immediately restraining the attorney from the practice of law, pending final disposition of a disciplinary proceeding based on the finding of guilt.

(c) The supreme court may set aside such order restraining the attorney from the practice of law in the interest of justice and for good cause shown. An order restraining an attorney from the practice of law shall not constitute a suspension of the attorney for the purposes of Rule 2.16 unless the supreme court so orders.

(d) When proof of a finding of guilt is filed with the supreme court, the supreme court shall refer the matter to the Board for institution of a formal proceeding in which the sole issue to be determined shall be the discipline to be imposed. Such a disciplinary proceeding shall not be brought to hearing until the conviction is final, unless the respondent requests that the proceeding continue. For purposes of this rule, a conviction is deemed final when:

(1) the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed or the petition has been denied; or

(2) the judgment of conviction has been affirmed.

(e) The final conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(f) If a lawyer suspended solely under the provisions of paragraph (b) demonstrates to the supreme court that the underlying finding of guilt has been reversed or vacated, the order for interim suspension shall be vacated and, upon payment of all required registration fees, the lawyer may be placed on active status. Vacation of the interim suspension will not automatically prohibit or terminate any formal proceeding against the lawyer and disposition of any formal proceeding against the lawyer must be on the basis of the available evidence other than the finding of guilt.

(*Renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended January 13, 1998, effective February 13, 1998; further amended August 14, 2000, effective January 1, 2000; further amended November 29, 2005, effective January 1, 2006; further amended November 23, 2007, effective January 1, 2008.*)

2.14. Resignation in lieu of discipline or disbarment by consent of attorneys under disciplinary investigation or prosecution.

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of grounds for his or her discipline may resign in lieu of discipline or consent to disbarment, but only by delivering to the Board Chairperson an affidavit stating that he or she desires to resign in lieu of discipline or consent to disbarment and that:

(1) his or her resignation in lieu of discipline or consent is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting his or her resignation or consent;

(2) he or she is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his or her discipline, the nature of which he or she shall specifically set forth;

(3) he or she acknowledges that the material facts so alleged are true; and

(4) he or she resigns or submits his or her consent because he or she knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he or she could not successfully defend himself or herself.

(b) Upon receipt of the required affidavit, the Board shall file with the supreme court and the supreme court shall enter an order granting the request to resign in lieu of discipline or disbarring the attorney on consent.

(c) The order granting the request to resign in lieu of discipline or disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be made available for use in any other proceeding except upon order of the supreme court or as otherwise allowed by these rules.

(d) Resignation in lieu of discipline is a disbarment for all purposes under these rules, including reinstatement.

(*Renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended May 14, 1993, effective May 14, 1993; further amended November 23, 2007, effective January 1, 2008; further amended June 25, 2013, effective July 1, 2013.*)

2.15. Reciprocal Action.

(a) An attorney who has, in any other jurisdiction:

(1) resigned in lieu of discipline;

(2) been disciplined;

(3) been transferred to inactive status; or

(4) been placed on interim suspension due to misconduct, incapacity, incompetence, or disability;

shall notify Counsel promptly of the foreign action. Upon notification of the foreign action, Counsel shall obtain a certified copy of the order and file it with the supreme court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been the subject of a foreign action as set out in (a), the supreme court shall forthwith issue a notice directed to the attorney containing: (1) a copy of the order from the other jurisdiction; and (2) an order directing that the attorney inform the supreme court, within 30 days from service of the notice, of any claim by the attorney that an equivalent or substantially equivalent order in this state would be unwarranted and the reasons therefor.

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, the supreme court shall enter an order imposing the same or substantially equivalent discipline, or restrictions or conditions upon the attorney's license to practice law in this jurisdiction, unless Counsel or the attorney demonstrates, or it clearly appears upon the face of the other jurisdiction's record, that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) there was such an infirmity of proof establishing the factual basis for the discipline, or restrictions or conditions as to give rise to the clear conviction that the supreme court could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or

(3) the reason for the other jurisdiction's discipline, or restrictions or conditions no longer exist; or

(4) the conduct established warrants substantially different discipline, or restrictions or conditions in this state. Where the supreme court determines that any of said elements exist, the

supreme court shall enter such other order as it deems appropriate.

(d) In all other respects, a final action in another jurisdiction, as set out in section (a), shall establish conclusively the factual basis for the same or substantially equivalent discipline, or restrictions or conditions on the attorney's license to practice law in this state.

(*Amended July 29, 1981, effective July 29, 1981; renumbered September 1984; amended August 17, 1993, effective August 17, 1993; further amended November 29, 2005, effective January 1, 2006; further amended November 23, 2007, effective January 1, 2008.*)

2.16. Disbarred or suspended attorneys.

(a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his or her disbarment or suspension and his or her consequent inability to act as an attorney after the effective date of his or her disbarment or suspension and shall advise said clients to seek legal advice elsewhere.

(b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his or her clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his or her disbarment or suspension and consequent inability to act as an attorney after the effective date of his or her disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys in his or her place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) Orders imposing suspension or disbarment shall be effective 30 days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date he or she may wind up and complete, on behalf of any client, all matters that were pending on the entry date. By the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall surrender to all clients all papers and property to which the clients are entitled and any advance payments of fees that have not been earned.

(d) Within ten days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the supreme court an affidavit showing: (1) that he or she has fully complied with these rules and with the portions of the order requiring completion before the effective date of the order; (2) all other state, federal and administrative jurisdictions to which he or she is admitted to practice; and (3) that he or she has served a copy of such affidavit upon Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her.

(e) The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit in which the disciplined attorney maintained his or her practice or on the Board's or the Judiciary's public website.

(f) The Board shall promptly transmit by electronic means a copy of the certified order of suspension or disbarment to all judges of the State of Hawai'i, and the administrative judge of each judicial circuit shall make such further order as he or she deems necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him or her under these rules so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with these rules and with the disbarment or suspension order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

(h) In the event the disbarred or suspended attorney should maintain a presence in an office where the practice of law is conducted, the disbarred or suspended attorney shall not have any contact with the clients of the office either in person, by telephone, or in writing, or have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

(*Renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended June 8, 2001, effective July 1, 2001; further amended October 24, 2005, effective January 1, 2006; further amended November 23, 2007, effective January 1, 2008; further amended March 5, 2008, effective March 5, 2008; further amended August 30, 2010, effective September 27, 2010; further amended October 26, 2012, effective January 1, 2013.*)

2.17. Reinstatement.

(a) Resumption of Practice. No suspended or disbarred attorney may resume practice until reinstated by order of the supreme court except as provided in Rule 17(d).

(b) Time to Apply.

(1) DISBARRED ATTORNEY. An attorney who has been disbarred may not apply for reinstatement until the expiration of at least five years after the effective date of the disbarment.

(2) ATTORNEY SUSPENDED 1 YEAR OR LESS. An attorney suspended from practice for one year or less who has complied with the suspension order and has paid all required fees shall be reinstated by order of the supreme court at the end of the period of suspension by filing with the supreme court and serving upon Counsel an affidavit to that effect.

(3) ATTORNEY SUSPENDED MORE THAN 1 YEAR. An attorney suspended from practice for more than one year may not apply for reinstatement until the expiration of at least one-half of the period of suspension.

(4) BURDEN OF PROOF; ELIGIBILITY. A disbarred attorney or an attorney suspended from practice for more than one year shall not be reinstated unless he or she can show proof of the following by clear and convincing evidence: rehabilitation, fitness to practice law, competence and compliance with all applicable disciplinary or disability orders and rules, and compliance with any other requirements imposed by the supreme court, which may include the successful completion of requirements for passing the bar examination.

(5) EVIDENCE COSTS, LAWYERS' FUND PAID. No suspended or disbarred attorney shall be eligible for reinstatement except upon a showing that he or she has reimbursed both the Board for all costs ordered including those incurred under RSCH 2.20, if any, and the Lawyers' Fund for Client Protection for monies paid out on account of the attorney's conduct, together with interest at the Hawai‘i statutory judgment rate.

(6) REQUIRED EVIDENCE. A petitioner under parts (b)(1) and (b)(3) of this Rule 2.17 shall support the petition with the following information, submitted under seal:

(A) the petitioner's current residence address and telephone number;

(B) the address of each of petitioner's places of residence during the period of discipline, along with the dates the petitioner resided at each address;

(C) the name, address and, telephone number of each of petitioner's employers, associates, or partners during the period of discipline, including the dates of each employment and position held,

(D) the names of all supervisors and reasons for leaving the employment, association, or partnership;

(E) the case caption, general nature and disposition of every civil and criminal action initiated, pending, or resolved during the period of discipline to which the petitioner was party or claimed an interest;

(F) a statement of monthly earnings and other income during the period of discipline, including the source of the earnings/income;

(G) a statement of assets and financial obligations during the period of discipline, including the dates acquired or incurred and the names and addresses of all creditors;

(H) a statement verifying that restitution, or reimbursement of costs, including to the client

protection fund, if appropriate, has been made and in what amount(s);

(I) a statement as to whether during the period of discipline the petitioner applied for reinstatement in any other jurisdiction and the results of any such proceedings;

(J) a statement identifying any other licenses or certificates for business or occupation applied for during the period of discipline;

(K) the names and addresses of all financial institutions at which petitioner had, or was a signatory to, accounts, safety deposit boxes, deposits or loans during the period of discipline;

(L) written authorization for the ODC to secure any financial records relating to those accounts, safety deposit boxes, deposits or loans; and

(M) copies of petitioner's state and federal income tax returns for the three years preceding the period of discipline and during the period of discipline along with written authorization for the ODC to obtain certified copies of the originals.

(7) SUBSEQUENT PETITIONS. If a petition for reinstatement is denied, the petitioner may reapply for reinstatement no earlier than 1 year after entry of the supreme court's order denying reinstatement.

(c) Petition the board; serve counsel; investigation; hearing; reports. Petitions for reinstatement by a disbarred attorney or an attorney suspended for more than one year shall be filed with the Board and served upon Counsel. Upon receipt of the petition, the Board shall, following a reasonable investigation by counsel of the attorney's fitness for reinstatement, refer the petition to a hearing committee or officer. The investigation shall be completed within 180 days unless the Board Chairperson, upon a showing of good cause, extends the time to complete the investigation. The hearing committee or officer shall promptly schedule a hearing, unless the petitioner requests the matter be heard upon the pleadings and exhibits and Chief Disciplinary Counsel agrees. Petitioner and Chief Disciplinary Counsel may stipulate to facts. Within 30 days after the conclusion of the hearing, the hearing committee or officer shall submit to the Board a report containing its findings and recommendations, together with the record of the proceedings unless such time is extended by the Board Chairperson for no more than 30 days for good cause shown. The Board shall review the report of the hearing committee or officer and the record and shall either: (1) remand the matter for further proceedings before the hearing committee or officer or (2) submit a report containing its findings and recommendations, together with the record, to the supreme court. The supreme court may grant briefing and oral argument at its discretion, either *sua sponte* or in response to a motion timely filed by either party within 10 days after the filing of the report with the court.

(d) Expenses. The supreme court shall, absent good cause to the contrary, direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the attorney seeking reinstatement, upon the filing by Counsel of a verified bill of costs within 60 days after final disposition of the petition.

(*Amended July 29, 1981, effective July 29, 1981, renumbered September 1984, further amended September 22, 1988, effective September 22, 1988; further amended February 7, 1992, effective February 7, 1992; further amended August 17, 1993, effective August 17, 1993; further amended and effective January 9, 1996; further amended and effective December 3, 1997; amended January 13, 1998, effective February 13, 1998; further amended June 8, 2001, effective July 1, 2001; further amended November 23, 2007, effective January 1, 2008; further amended June 25, 2013, effective July 1, 2013; further amended December 3, 2013, effective January 1, 2014*.)

2.18. Deleted.

2.19. Proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated.

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the supreme court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until further order of the supreme court. A copy of such order shall be served upon such attorney, his or her guardian, and/or the director of the institution to which he or she has been committed in such manner as the supreme court may direct.

(b) Whenever the Board shall petition the supreme court to determine whether an attorney is incapacitated from continuing the practice of law by reason of physical or mental infirmity or illness or because of the use of drugs or intoxicants, the supreme court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the supreme court shall designate. If, upon due consideration of the matter, the supreme court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him or her to inactive status on the ground of such disability for an indefinite period and until the further order of the supreme court.

The supreme court shall provide for such notice to the respondent attorney of proceedings in the manner as it deems proper and advisable and shall appoint an attorney to represent the respondent if he or she is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness, or because of the use of drugs or intoxicants, which makes it impossible for the respondent to defend himself or herself adequately, the supreme court thereupon shall enter an interim order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of (b) above.

If the supreme court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(d) The Board shall cause a notice of interim or final transfer to inactive status to be published in a newspaper of general circulation in the judicial circuit in which the disabled attorney maintained his or her practice and shall further cause a notice of a return to active status to be similarly published.

(e) The Board shall promptly transmit a certified copy of the interim or final order of transfer to inactive status to all judges of the State of Hawai‘i and shall request such action under the provisions of Rule 2.20 of these Rules as may be indicated in order to protect the interests of the disabled attorney and his or her client.

(f) No attorney transferred to inactive status under the provisions of this Rule may resume active status until reinstated by order of the supreme court. Any attorney transferred to inactive status under the provisions of this Rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the supreme court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the supreme court upon a showing that the attorney's disability has been removed and he or she is fit to resume the practice of law. Upon such application, the supreme court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the supreme court shall designate. In its discretion, the supreme court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above, and, thereafter, in proceedings duly taken, he or she has been judicially declared to be competent, the supreme court may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(g) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his or her disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his or her transfer to inactive status and he or she shall furnish to the supreme court written consent to each to divulge such information and records as requested by court-appointed medical experts.

(h) Transfer of an attorney to inactive status pursuant to this Rule shall not preclude Counsel's investigation of the attorney's conduct, including but not limited to, the gathering and preserving of evidence, provided that no disciplinary proceeding shall be commenced and any pending disciplinary proceeding against the attorney shall be held in abeyance while the attorney remains on inactive status pursuant to this Rule.

(i) Pursuant to Rule 2.22(f) of these Rules, the record of proceedings undertaken pursuant to this Rule shall be confidential, except for interim and final orders transferring an attorney to inactive status, and any subsequent order returning the attorney to active status.

(*Amended July 29, 1981, effective July 29, 1981, renumbered September 1984; amended February 7, 1992, effective February 7, 1992; amended effective July 1, 1999; further amended November 23, 2007, effective January 1, 2008; further amended March 7, 2016, effective July 1, 2016.*)

2.20. Trustee proceedings.

(a) Grounds for appointment of trustee. Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, or has been suspended or disbarred and has not complied with Rule 2.16, or there is other good cause exhibiting an attorney's inability to protect the interests of the attorney's clients, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the supreme court, upon proper proof of the fact, shall appoint an attorney as trustee to inventory the files of the inactive, disappeared, deceased, suspended, or disbarred attorney and to take such action as seems indicated to protect the interests of that attorney's clients.

When appointment of a trustee is warranted, Counsel shall file with the supreme court a motion for appointment of an attorney to serve as trustee. Trustees may receive compensation for their services, and may be reimbursed for traveling and other expenses incidental to the performance of their duties.

(b) Confidentiality. A trustee shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the supreme court's order appointing the attorney to make such inventory and cooperate in investigations by Counsel or the Lawyers' Fund for Client Protection (Fund).

(c) Duties of trustees.

(1) A trustee appointed under this rule shall:

(i) take custody of all client files and records of the attorney;

(ii) publish one (1) advertisement in a newspaper of general circulation announcing that the trustee has been appointed to inventory the attorney's client files, that the attorney's clients may contact the trustee to retrieve their files within the time specified in the advertisement, and that unclaimed items will be destroyed;

(iii) send form notices by regular mail to all of the attorney's clients, informing them of the attorney's status and that those clients may obtain their files by contacting the trustee at an address and telephone number specified in the notices; and

(iv) obtain and maintain written records and verification of all files released to the attorney's clients.

(2) A trustee appointed under this rule may:

(i) employ locksmiths to open the attorney's present and former law offices, as well as open any safes, cabinets, closets, or other secured areas located within the attorney's present and former law offices and any other areas under the attorney's control (if necessary in the discretion of the trustee);

(ii) take possession of any trust and other bank accounts found or known to exist, determine amounts therein and amounts due the clients for whom the accounts are held, and seek orders from the supreme court for disbursement of amounts due to the clients;

(iii) if the trustee is designated by the trustees of the Fund to act on behalf of the trustees for the Fund, cause subpoenas to be issued pursuant to Rule 10.6 and authorize his or her staff to have access to the attorney's business and banking records to consult with and advise the Fund Trustees concerning the validity and propriety of claims brought by the attorney's clients against the Fund;

(iv) employ accountants and bookkeepers as necessary to determine the source and ownership of funds recovered by the trustee;

(v) upon approval by the Disciplinary Board, place any unclaimed files in storage (in the custody of the Disciplinary Board); or

(vi) take such further action as the supreme court directs.

(d) Disposition of unclaimed files. Following discharge of the trustee, the attorney's client files shall be stored by Counsel for a period of one (1) year. At any time thereafter, Counsel may publish a legal notice in a newspaper of general circulation announcing that the attorney's client files will be destroyed in thirty (30) days if unclaimed.

Upon expiration of the thirty (30) day period, Counsel may destroy any unclaimed files which, in the exercise of discretion, Counsel concludes do not contain original documents of value to the attorney's clients.

(e) Upon appointment of a trustee, the attorney whose files are the subject of the trusteeship may, by order of the supreme court, be suspended from the practice of law in this state until the trusteeship is completed and may be required to pay to the Board all costs ordered and incurred, together with interest at the Hawai‘i statutory judgment rate.

(*Renumbered September 1984; amended effective May 7, 1990; amended effective August 1, 1998; further amended June 8, 2001, effective July 1, 2001; further amended November 23, 2007, effective January 1, 2008; further amended November 14, 2013, effective November 14, 2013.*)

2.21. Deleted.

2.22. Confidentiality.

(a) General rule. The files, records and proceedings of the Board, the hearing committees or officers, and Counsel, and of mentors participating in minor misconduct programs pursuant to Rule 2.7(b) of these Rules, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of an attorney, shall be deemed confidential and shall not be disclosed except under the following circumstances:

(1) As between Counsel, the committees or officers, the Board and the supreme court in the furtherance of their duties;

(2) As between the Board, Counsel and an attorney admission or disciplinary authority, or judicial selection or disciplinary authority, of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice;

(3) Upon the request of the attorney affected;

(4) Where permitted by the supreme court;

(5) Where required or permitted by these Rules;

(6) Where the investigation is predicated upon a conviction of the respondent for a crime;

(7) Where 90 days have passed since the service on a respondent of a Petition for discipline, unless

(A) such time is extended by the Board Chairperson for no more than 45 days for good cause shown or

(B) the Board imposes a private reprimand with the consent of the respondent and Counsel, or imposes a private informal admonition.

(8) Where reinstatement proceedings are initiated pursuant to Rule 2.17(c) of these Rules.

(b) Disclosure of evidence of a crime. Upon receipt of trustworthy evidence that an attorney has committed a crime and to protect the interests of the public, the administration of justice, or the legal profession, the Chairperson of the Board may authorize Counsel to disclose the evidence to appropriate law enforcement or prosecuting authorities. Counsel may not disclose that an attorney voluntarily sought, received, or accepted treatment from the Attorneys and Judges Assistance Program or the record of such treatment.

(c) Disclosure of evidence of infirmity. The Chairperson of the Board, upon the receipt of trustworthy evidence, may authorize Counsel to disclose an attorney's possible substance abuse, physical or mental illness, or other infirmity to the Director of the Attorneys and Judges Assistance Program.

(d) Disclosure of resignation affidavit. An affidavit resigning in lieu of discipline or consenting to disbarment submitted pursuant to Rule 2.14 of these Rules shall be submitted to the hearing committee or officer, to the Board, and to the supreme court at any time that the attorney applies for reinstatement. Such affidavit shall also be supplied to an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice.

(e) Authorized statements. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the respondent, the Board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the respondent to a fair hearing without prejudgment, and to state that

the respondent denies the allegations. The statement shall be first submitted to the respondent involved for his or her comments and criticisms prior to its release, but the Board in its discretion may release the statement as originally prepared.

(f) Supreme Court records are generally public. Except as ordered by the supreme court, or as otherwise provided by these Rules, the files, records and proceedings filed with the supreme court by the Board, by Counsel or by a respondent, as well as any oral argument held before the supreme court in connection with any disciplinary proceedings, are not confidential, except that in proceedings under Rule 2.19 of these Rules, any order transferring an attorney to inactive status or subsequently to active status shall be a matter of public record, but otherwise, the record of the proceedings shall not be publicly disclosed.

(g) ABA databank coordination. In addition, the Board shall transmit notice of all public discipline imposed by the supreme court, or transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association.

(*Amended effective July 29, 1981; renumbered September 1984; amended effective November 23, 1987; further amended November 8, 1991, effective November 8, 1991; further amended February 7, 1992, effective February 7, 1992; further amended March 18, 1993, effective March 18, 1993; further amended March 8, 1995, effective March 23, 1995; further amended and effective January 9, 1996; further amended October 21, 1999, effective January 1, 2000; further amended September 16, 2002, effective January 1, 2003; further amended October 6, 2003, effective January 1, 2004; further amended November 23, 2007, effective January 1, 2008; further amended April 5, 2010, effective July 1, 2010; further amended June 25, 2013, effective July 1, 2013; further amended November 14, 2013, effective November 14, 2013; further amended August 22, 2014, effective January 1, 2015; further amended March 7, 2016, effective July 1, 2016.*)

2.23. Interim suspension.

(a) Upon receipt of sufficient evidence demonstrating that an attorney has committed a violation of the Hawai‘i Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Counsel may:

(i) transmit the evidence to the supreme court; and

(ii) contemporaneously make a reasonable attempt to provide the attorney with notice, which may include notice by telephone, that a request for immediate interim suspension has been transmitted to the supreme court.

(b) Upon examination of the evidence transmitted to the supreme court by Counsel and of rebuttal evidence, if any, that the attorney has transmitted to the supreme court prior to the supreme court’s ruling, the supreme court may enter an order immediately suspending the attorney, pending final disposition of the disciplinary proceedings predicated upon the conduct of causing the harm, or may order such other action as it deems appropriate.

(c) On notice to Counsel, an attorney suspended pursuant to (b) may move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as justice requires.

(d) An order imposing an interim suspension on an attorney under this rule shall not constitute a suspension of the attorney for the purposes of Rule 2.16 unless the supreme court shall otherwise order.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended November 23, 2007, effective January 1, 2008.*)

2.24. Audit of trust accounts.

(a) When audit may be ordered.

(1) The Chairperson may order an audit of any trust accounts maintained by an attorney upon:

(i) An attorney’s failure to file the trust account verification required by Rule 1.15 of the Hawai‘i Rules of Professional Conduct;

(ii) The filing of a petition for creditor relief on behalf of an attorney;

(iii) The filing of felony charges against an attorney;

(iv) An allegation an attorney is incapacitated under Rule 2.19 of these rules, or a judicial determination the attorney is incompetent or upon involuntary commitment on grounds of incompetency or disability;

(v) The filing of a claim against the attorney with the Lawyers' Fund for Client Protection;

(vi) Court order; or

(vii) Counsel's request for other good and sufficient reasons.

(2) Counsel may order and supervise an audit when an attorney's trust account (i) check is paid against insufficient funds or dishonored or (ii) balance falls below zero.

(b) Random audits. The Board may randomly order audits of trust accounts.

(c) Cost of audit. Audits conducted in any of the circumstances enumerated in paragraph (a)(1) or (b) above shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements. Audits conducted in either of the circumstances enumerated in paragraph (a)(2) shall be at the cost of the attorney unless the Chairperson determines upon trustworthy evidence, the financial institution erred. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit.

(d) Examination of other financial accounts. Nothing in this rule shall preclude the examination of the other financial accounts of an attorney if the examination of the attorney's trust accounts reveals to the satisfaction of the Chairperson or Counsel that the attorney is not in substantial compliance with trust accounting requirements.

(e) Review. Counsel's decision to order an audit may be appealed to the Chairperson. The appeal must be filed in writing with the Chairperson within fifteen (15) days after Counsel notifies the attorney an audit has been ordered. The decision of the Chairperson or the Chairperson's designee is not further appealable.

(*Added September 22, 1988, effective September 22, 1988; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994; further amended and effective January 9, 1996; further amended October 2 & 4, 2007, effective January 1, 2008.*)

2.25. Effect of Hawai'i Electronic Filing and Service Rules.

Documents filed and notices given in accordance with the Hawai'i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice, and service requirements of any part of this Rule 2.

(Added August 30, 2010, effective September 27, 2010.)

2.26. Effective date.

These rules shall become effective on July 1, 1974, and any disciplinary investigation pending on that date shall be transferred to the Board, provided that any case then pending with respect to which a formal hearing has been commenced shall be concluded under the procedure existing prior to the effective date of these rules.

(*Renumbered July 29, 1981, further renumbered September 1984 further renumbered September 22, 1988.*)

Rule 3. ATTORNEY AND CLIENT. FIDUCIARIES.

(1) An attorney who is under a general retainer from, or who is regularly employed by, or who is a director of a trust institution shall disclose the fact to any person who requests him to draft a will or trust instrument naming such trust institution as a fiduciary. If after this disclosure the person desires the attorney to advise him and draft the will or trust instrument the attorney may comply with his request.

(2) An attorney preparing a will or trust instrument for a testator or trustor shall not accept compensation from the fiduciary for drawing the document or for advice relative thereto.

(3) An attorney drawing a will or trust instrument shall establish the professional relationship of an attorney and client with the testator or trustor and shall receive his instructions from and give his advice to his client, preferably in personal interviews, or if that is impracticable, in such other manner as the attorney considers will satisfy his professional duty to his client and will enable him to represent and protect the interests of his client.

(4) An attorney shall reserve the right to advise his client with respect to the choice of a fiduciary.

(5) An attorney should not seek to displace the fiduciary of the client's choice by inducing the appointment of another, unless the attorney believes the client's affairs demand such substitution, or where the attorney believes that the interests of the client will suffer if such substitution is not made.

(6) An attorney under general retainer from, or regularly employed by, or who is a director of a trust institution shall, before recommending to a prospective testator or trustor that such trust institution be named as fiduciary, make a full disclosure of such relationship.

(7) No attorney who is actively carrying on executive or administrative activities of a trust institution shall act as attorney in the preparation of a will or trust instrument in which such institution is named as a fiduciary.

(8) As used herein the term "trust institution" shall mean any individual, partnership, or corporate fiduciary, including any bank having a trust department.

(*Renumbered September 1984*.)

Rule 4. JUDICIAL COUNCIL.

(a) Appointment. There shall be a judicial council consisting of the chief justice and not more than 15 other members appointed by this court. Except as provided by subsection (c) below, each member shall serve for a term of 3 years. Any vacancy shall be filled by the court for the unexpired term. The membership shall be fairly representative, including laymen as well as judges and lawyers.

(b) Functions. The council shall serve in an advisory capacity only, shall give continuing consideration to the administration of justice in the courts of the state, and shall make reports and recommendations biennially to this court and also whenever deemed advisable by this court.

(c) Continuing functions. The chief justice may, in his discretion, allow any member whose term has expired to continue to work with the council to complete a project or matter with which the member has been involved. The former member may vote upon the project or matter only if the council is composed of fewer than 15 members.

(d) Quorum. A majority of the total membership shall constitute a quorum. No action shall be taken unless a quorum is present. A majority vote of the members present shall be necessary to make any action of the Council valid. The Chief Justice shall abstain from voting on any measure, except in the event of a tie. The Chief Justice's attendance shall be counted to determine a quorum.

(*Renumbered September 1984; amended effective October 23, 1996; amended effective October 13, 1998*.)

Rule 5. HAWAIʻI REVISED CODE OF JUDICIAL CONDUCT

The Hawaiʻi Revised Code of Judicial Conduct attached hereto as Exhibit B is adopted as the standard of conduct for members of the Hawaiʻi Judiciary.

(*Amended August 29, 1983, effective January 1, 1984; renumbered September 1984; amended effective May 10, 1988; further amended December 10, 2008, effective January 1, 2009*.)

Rule 5.1. ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS.

(a) Reserved.

(b) Reserved.

(c) Definitions. As used in these Rules 5.1, 5.2, and 5.3, unless the context otherwise requires:

(1) "Proceeding" or "Proceedings" means any trial, hearing, motion, hearing on an order to show cause or petition, appellate argument, or any other matter held in open court which the public is entitled to attend.

(2) "Extended coverage" means any recording or broadcasting of proceedings through the use of television, radio, photographic, or recording equipment by the media or on behalf of educational institutions.

(3) "Extended audio coverage" means any recording or broadcasting of words spoken during a proceeding through the use of television, radio, or recording equipment by the media or on behalf of educational institutions.

(4) "Judge" means the justice, judge, or judicial officer presiding over the proceedings in which extended coverage is or is requested to be taking place. In courts with more than one "judge" presiding over the proceedings, any decision required to be made by the "judge" shall be made by a majority of the judges.

(5) "Administrative judge" means any judge selected to perform administrative duties in a circuit or district court with more than one judicial officer.

(6) "Coordinator" means the person designated by each administrative judge to receive requests for extended coverage of proceedings within their respective circuit or district.

(7) "Party" means a named litigant of record who has appeared in the case.

(8) "Attorney" means the attorney of record appearing for a party. A party may have only one attorney of record authorized to act on behalf of that party in the proceeding at any one time but may designate a different attorney or change attorneys at any time as permitted by law.

(9) "Trial participants" means parties, attorneys, witnesses, court personnel, and the judge or judges present during the conduct of proceedings.

(10) "Media" means any news gathering or reporting agencies and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or other news reporting or news gathering agencies whose function it is to inform the public or some segment thereof.

(11) "Educational institution" means any public or private school of lower or higher education, the Hawai‘i Institute for Continuing Legal Education, the Hawai‘i State Bar Association Committee for Legal Education for Youth, any division of the Hawai‘i State Judiciary, or any nonprofit organization or corporation whose proposal for extended coverage is approved by the Administrative Director of the Courts.

(12) "Presumption" means a rebuttable assumption of fact made from another fact or group of facts found or otherwise established in an evidentiary proceeding.

(13) "Good cause" means that, under the circumstances of the particular proceeding, or any portion thereof, extended coverage or extended audio coverage would materially interfere with the rights to a fair trial.

(14) "Pooling arrangements" means any system for media accreditation, and internal media cooperation resulting in requests for extended coverage or compliance with guidelines established for extended coverage, or any method of distributing extended coverage to all media sources seeking the type of coverage obtained.

(15) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this State or by any public servant authorized by law to impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror.

(16) “Bar” means a member of the Hawai‘i State Bar Association who is licensed and in good standing.

(d) General provisions and exclusions.

(1) Nothing in this rule is intended to restrict in any way the right of the media to report on proceedings.

(2) Nothing in this rule affects the authority to permit extended coverage of investitive, ceremonial, or naturalization proceedings.

(3) Nothing in this rule is intended to alter any rules of professional or judicial conduct or canons of ethics of attorneys or judges, except as specifically provided for in this rule.

(4) Nothing in this rule is intended to limit or restrict the power of the judge to control the conduct of the proceedings.

(5) If extended coverage or extended audio coverage is permitted under this rule, such shall be impartially given to all media representatives.

(e) Request for extended coverage.

(1) All requests for extended coverage shall be made by the media or educational institution to the coordinator a reasonable time in advance of the commencement of the extended coverage. "Reasonable time" as used herein shall mean the period of time required for all parties to be notified in advance, shall consider the realities of court scheduling, and shall be the minimum time required to accomplish such notification.

(2) Requests for extended coverage shall be made in writing on a form provided by the Judiciary and shall refer to the individual case with sufficient identification to assist the coordinator in providing the required notice. Such requests may be filed with the coordinator in person, by mail, or by facsimile transmission. Requests for extended coverage shall relate to an entire case. Once application is made for extended coverage for any case, that application shall apply through the final judgment and any post-judgment motions and appeals.

(3) Upon receipt of the written request, the coordinator shall in turn expeditiously notify, in person or by telephone, counsel for all parties or the parties themselves if represented pro se and the presiding judge (or if the presiding judge has not yet been determined, the appropriate administrative judge).

(4) Only one written request shall be necessary for any given case; once application is made, all media are considered to have applied, i.e., if a television station makes application, newspaper coverage is included and vice versa.

(5) When more than one media representative requests extended coverage or extended audio coverage, the media collectively shall designate one representative to work with the coordinator.

(f) Standard for consent to extended coverage.

(1) Prior consent of a judge shall not be required for extended coverage of any appellate proceeding. Extended coverage of all other proceedings shall not be permitted without the prior determination of the judge.

(2) The judge shall dispose, orally and on the record, of each request for extended coverage or extended audio coverage or by written order if requested by any party and, if coverage is denied, shall make written findings of fact and conclusions of law.

(3) A judge shall grant requests for extended coverage or extended audio coverage of a proceeding unless, by a preponderance of the evidence, good cause is found to prohibit such coverage. In situations where the judge has found good cause to prohibit extended coverage or extended audio coverage, the judge may permit extended coverage or extended audio coverage of only a portion or portions of the proceeding.

(4) A party may object to extended coverage at the beginning of any new stage of the case. If a party objects or if the court orders on its own motion, there shall be a hearing to determine whether extended coverage or extended audio coverage shall be allowed for that stage of the case. If no party objects, no hearing shall be necessary. At such hearing the media shall have standing to be heard and may present evidence. Any objection by a party (or a party acting pro se) to extended coverage or extended audio coverage must be made before extended coverage or extended audio coverage begins for that stage of the case.

(5) A presumption of good cause shall exist in the following circumstances:

(i) the proceeding is for the purpose of determining the admissibility of evidence; or

(ii) testimony regarding trade secrets is being received; or

(iii) testimony of child witnesses is being received; or

(iv) testimony of a complaining witness in a prosecution for any sexual offense under Part V of the Hawai‘i Penal Code is being received; or

(v) a witness would be put in substantial jeopardy of serious bodily injury; or

(vi) testimony of undercover law enforcement agents who are involved in other ongoing undercover investigations is being received.

(6) At any time during the proceedings for which extended coverage has been granted, a judge acting sua sponte or on the objection of a witness may, upon establishing that good cause exists following a hearing, terminate or limit extended coverage.

(7) All objections to extended coverage shall be noted on the record of the proceedings and in the minutes of the court.

(8) The media or educational institution or any party may obtain review of an order regarding extended coverage by filing a motion for review addressed to the appropriate administrative judge, who shall have full power to vacate and modify the order. A motion for review shall be filed no later than 5 days after the filing of the order regarding coverage. In disposing of the motion for review the administrative judge shall comply with subdivision (f)(2) of this Rule. The record of the proceeding before the administrative judge shall be made part of the record of the underlying proceeding for which coverage is sought. Where a request for extended coverage is initially referred to an administrative judge and ruled upon, there shall be no further review.

(9) A party may seek appellate review of an order regarding extended coverage, including any such order issued by the administrative judge, pursuant to the procedures available for review of other interlocutory orders, but immediate appellate review of such an order shall not be available as a matter of right.

(g) Restrictions on extended coverage.

(1) There shall be no extended coverage of any proceedings which are by law closed to the public, or which may be closed to the public and have been closed by the judge. Examples of proceedings closed to the public include, but are not limited to, grand jury proceedings, juvenile cases, child abuse and neglect cases, paternity cases and adoption cases.

(2) There shall be no extended coverage of a juror or a prospective juror.

(3) There shall be no extended audio coverage of conferences between attorneys and clients, or between co-counsel and clients or parties, or between counsel and the judge held at the bench.

(4) There shall be no extended coverage of any conference or proceedings held in the chambers of a judge or any *in camera* proceeding.

(h) Procedure for extended coverage.

(1) Extended coverage shall be conducted in compliance with the guidelines in Rule 5.2 so as not to be distracting and not to interfere with the solemnity, decorum, and dignity which must attend the making of decisions that affect the life, liberty, or property of citizens.

(2) If a judge finds that the provisions of this Rule or the guidelines in Rule 5.2 have been violated by those seeking extended-coverage or the continuation thereof, a judge may exercise discretion to limit or terminate extended-coverage as to the offending extended-coverage personnel or equipment.

(3) If pooling arrangements are necessary for compliance with this Rule or with guidelines for extended-coverage contained in Rule 5.2, pooling arrangements shall be instituted and shall be the sole responsibility of the media and shall not require the judge, coordinator, or other court personnel to mediate disputes.

(*Added August 29, 1983, effective January 1, 1984; renumbered September 1984; amended effective December 9, 1985; amended effective January 2, 1987; amended effective December 7, 1987; amended effective May 10, 1988; amended effective September 28, 1990; further amended April 26, 1994, effective April 26, 1994; further amended effective June 10, 1997; further amended November 25, 2008, effective January 1, 2009; further amended July 29, 2013, effective January 1, 2014; effective date of July 29, 2013 order stayed until July 1, 2014 by order entered December10, 2013; effective date of December 10, 2013 order stayed continued to December 31, 2014 by order entered June 17, 2014; further amended December 22, 2014, effective January 1, 2015 to December 31, 2015; adopted permanently and further amended November 25, 2015, effective January 1, 2016.)*

Rule 5.2. TECHNICAL GUIDELINES TO BE FOLLOWED WHEN EXTENDED COVERAGE IS PERMITTED UNDER RULE 5.1 OR WHEN A JUDGE GRANTS A SEPARATE REQUEST.

(a) Equipment and personnel.

(1) Equipment from one television station or network - designated as the pooling station or network - shall be permitted access to a courtroom proceeding at one time. The pooling station or network shall use only portable electronic cameras which, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. One television camera, operated by one camera person, shall be admitted to record a proceeding. A second camera may be admitted for live coverage in the discretion of the judge.

(2) Not more than one audio system shall be permitted in the courtroom for extended coverage of a proceeding. Audio pickup for extended coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Any changes in existing audio systems shall be approved by the judge or the judge's representative. No modifications of existing systems shall be made at public expense. Microphones, wiring, and recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding. Where possible, electronic recording equipment and any operating personnel shall be located outside of the courtroom.

Notwithstanding the provisions of this Rule, a judge may, in the judge's sole discretion and whether or not extended coverage has been otherwise allowed, grant a timely request by a party, a member of the public, or an individual member of the media, to make an audio recording of the proceedings by means of a small, hand-held recorder with a built-in microphone and operated from the seat of the person who made the request.

(3) A judge may also grant a timely request by a member of the public or an individual member of the media to use electronic devices, such as laptops, tablets, cell phones, smartphones, or similarly functioning devices having wireless communication capacity, subject to the following conditions set forth below.

(A) Use of electronic devices under this Rule is restricted to law- or court-related business purposes and is subject to the requirements of subsections (i) through (iv) below. In addition, the presiding judge of a proceeding may prohibit or further restrict the use of any electronic devices prior to or during proceedings to protect the interests of security, safety, and privacy of parties, jurors, witnesses, attorneys, court personnel, or the public, or to ensure the integrity, decorum, or orderly conduct of proceedings. Failure to adhere to these requirements, prohibitions, or restrictions may result in removal of the person or device from the courtroom or courthouse or the imposition of other sanctions.

(i) Electronic devices, such as laptops, tablets, cell phones, smartphones, or similarly functioning devices having wireless communication capacity may not be used in courtrooms and during proceedings, unless otherwise authorized by the court. Electronic devices may not be used to photograph or for audio or video recording, or for audio or video streaming, except as authorized by this Rule and Rule 5.1 of these Rules.

(ii) Within the courtroom, keyboards must be silent. Texting, e-mailing, accessing the internet, and other forms of electronic communication are acceptable uses if conducted without being audibly or visually distracting to others.

(iii) The presiding judge may designate a portion of the courtroom for the use of electronic devices.

(iv) Ring tones and other sounds produced by these devices shall be disabled or silenced. Electronic devices brought into the courtroom cannot be used to make or receive calls inside the courtroom, unless otherwise authorized by the court.

(4) One still photographer, using not more than 2 still cameras with not more than 2 lenses for each camera, shall be permitted in a proceeding subject to extended coverage. A second still photographer, using not more than 2 still cameras with not more than 2 lenses for each camera, may be admitted in the discretion of the judge. A still photographer also may use the permitted still camera to video record proceedings.

(5) No equipment or clothing of any extended coverage personnel shall bear any insignia or identification of the individual media or network involved in extended coverage.

(6) Sufficient video and audio tape capacities should be provided to obviate tape changes except during court recess.

(b) Sound and light criteria. Only television video and audio equipment and still camera equipment that does not produce distracting sound or light shall be employed to cover proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera or still camera.

(*Added August 29, 1983, effective January 1, 1984, renumbered September 1984; amended effective May 10, 1988; amended effective July 15, 1998; further amended December 22, 2014, effective January 1, 2015 to December 31, 2015; adopted permanently and further amended November 25, 2015, effective January 1, 2016.*)

Rule 5.3. USE OF ELECTRONIC DEVICES IN COURTROOMS BY THE BAR, JUDICIARY PERSONNEL AND SELF-REPRESENTED LITIGANTS.

(a) Application. This Rule applies to the use of electronic devices by the bar, judiciary personnel, and self-represented litigants and does not apply to the use of electronic devices by jurors. This Rule applies in all courtrooms, and in or during proceedings as defined in Rule 5.1(c) of these Rules, that are open to the public. This Rule also applies when a court holds proceedings in locations outside a courthouse, including spaces in public schools, law schools, and other locations, unless otherwise specified by the court.

Within the locations specified above, the bar, judiciary personnel, and self-represented litigants may carry and use electronic devices as set out in this Rule. Except as provided by this Rule or Rule 5.2 of these Rules, the use of electronic devices in courtrooms is prohibited.

(b) Requirements for use.

(1) Use of electronic devices under this Rule is restricted to law or court related business purposes and is subject to the requirements of subsections (2) through (5) below. In addition, the presiding judge of a proceeding may prohibit or further restrict the use of any electronic devices prior to or during proceedings to protect the interests of security, safety, and privacy of parties, jurors, witnesses, attorneys, court personnel, or the public, or to ensure the integrity, decorum, or orderly conduct of proceedings. If prohibiting or further restricting the use of electronic devices, the judge shall state on the record the reason(s) prohibition or further restriction is deemed necessary. Failure to adhere to these requirements, prohibitions, or restrictions may result in removal of the person or device from the courtroom or courthouse or the imposition of other sanctions.

(2) Electronic devices, such as laptops, tablets, cell phones, smartphones, or similarly functioning devices having wireless communication capacity may be used in courtrooms and during proceedings by members of the bar using the member's own electronic device power source, unless otherwise authorized by the court. Members of the bar seated in the gallery must visibly display their HSBA picture identification cards to utilize electronic devices. Electronic devices may be used by self-represented litigants only with prior permission of the presiding judge and only at counsel table during a proceeding in which the self-represented litigant is participating. However, electronic devices may not be used to photograph or for audio or video recording, or for audio or video streaming, except as authorized by Rules 5.1 and 5.2 of these Rules.

(3) Within the courtroom, keyboards must be silent. Texting, e-mailing, accessing the internet, and other forms of electronic communication are acceptable uses if conducted without being audibly or visually distracting to others.

(4) The presiding judge may designate a portion of the courtroom for use of electronic devices.

(5) Electronic devices may be brought inside the courtroom, but ring tones and other sounds produced by these devices shall be disabled or silenced. Electronic devices brought into the courtroom cannot be used to make or receive calls inside the courtroom, unless otherwise authorized by the court.

(Added July 29, 2013, effective January 1, 2014; effective date stayed until July 1, 2014 by order entered December10, 2013; effective date of December 10, 2013 order stayed continued to December 31, 2014 by order entered June 17, 2014; further amended December 22, 2014, effective January 1, 2015 to December 31, 2015; adopted permanently by order entered November 25, 2015, effective January 1, 2016.)

Rule 6. LAWYER'S PROFESSIONAL BUSINESS ORGANIZATIONS.

(a) Compliance with this rule and applicable statutes. Any person or persons seeking to practice law as a corporation, a company, an association, in partnership, or in some other lawful organizational form (hereafter, lawyers' professional business organization) shall comply with the provisions of this rule and if applicable statutes.

(b) Name. Subject to any additional statutory restrictions or requirements, the name under which a lawyers' professional business organization practices law shall accord with the provisions of the Hawai‘i Rules of Professional Conduct governing law firm names and shall also include the words "A Law Corporation, "A Limited Liability Law Company," "A Limited Liability Law Partnership," or other appropriate designation, whenever applicable.

(c) Limitation to the practice of law. A lawyers' professional business organization shall be organized only for the purpose of rendering legal services and services ancillary thereto. A lawyers' professional business organization may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, so long as such investment does not violate any provision of the Hawai‘i Rules of Professional Conduct and does not involve the lawyers' professional business organization in substantial business activity unrelated to the practice of law.

(d) Shares; ownership and transfer.

(1) Shares or interests in a lawyers' professional business organization may be owned only by a lawyers' professional business organization or by one or more persons licensed to practice law in this state by this court, provided that shares may be transferred by a shareholder to a revocable living or inter vivos trust subject to statutory conditions and subject to the additional condition that any such trust shall terminate if the shareholder is disqualified from the practice of law.

(2) The shares or interests of a lawyers' professional business organization owned by a person who dies or who becomes a disqualified person shall be acquired by the lawyers' professional business organization, or by its remaining shareholders or partners, or by one or more persons licensed to practice law in this state by this court, in accordance with statutory procedures.

(3) The requirements of subsections (d)(1) and (d)(2) of this rule shall be set forth in the lawyers' professional business organization's articles of incorporation, by-laws, partnership agreements, or other such organizational documents.

(4) The share certificates or other memorializations of ownership interests in a law corporation lawyers' professional business organization shall contain an appropriate legend setting forth the restrictions set forth in subsections (d)(1) and (d)(2) of this rule.

(5) The by-laws of a lawyers' professional business organization shall provide that the income of a lawyers' professional business organization that are attributable to its practice of law while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or his or her shares or interests in the lawyers' professional business organization.

(e) Directors. Notwithstanding any statutory provisions, each director of a lawyers' professional business organization shall be licensed to practice law in this state by this court. A lawyers' professional business organization that has only one shareholder need have only one director who shall be such shareholder.

(f) Officers. Notwithstanding statutory provisions, each officer of a lawyers' professional business organization shall be licensed to practice law in this state by this court, except as provided in this subsection (f). If a lawyers' professional business organization is incorporated with a single shareholder and single director after July 1, 1987, or if a lawyers' professional business organization converts to having a single shareholder and a single director after that date, the person or persons holding the offices of secretary and treasurer need not be licensed. If a lawyers' professional business organization had a single shareholder and single director prior to July 1, 1987, the person or persons holding the offices of vice-president and secretary need not be licensed, in which event the offices of president and treasurer shall be held by the sole shareholder as previously required by this rule. An unlicensed person, even if permitted to serve as an officer pursuant to this rule, shall in no event serve as a director or be a shareholder of a lawyers' professional business organization.

(g) Financial responsibility.

(1) LIABILITY NOTICE. Except as provided in subsection 2 of this section (g), the articles of incorporation or partnership agreement of a lawyers' professional business organization, its by-laws and all of its share certificates or other instruments of ownership shall clearly specify that, notwithstanding any other provision of law, the financial responsibility of persons licensed to practice law in this state is not limited by reason of being shareholders, officers, directors, or partners of the lawyers' professional business organization and that the liability of shareholders, officers, directors, or partners, for the acts, errors and omissions of the shareholders, officers, directors, partners, or other employees of the lawyers' professional business organization arising out of the performance of professional services by the lawyers' professional business organization while they are shareholders, officers, directors, or partners is joint and several to the same extent as if the shareholders, officers, directors, or partners were general partners engaged in the practice of law, provided, however, that this subsection (g) shall not apply to any unlicensed person who serves as an officer in accordance with subsection (f) of this rule.

(2) GENERAL RULE ON LIABILITY. If the lawyers' professional business organization maintains errors and omissions coverage in amounts not less than $100,000 for each attorney in the organization or not less than $5,000,000 for the lawyers' professional business organization and if permitted by statute, the professional liability of each shareholder or partner or attorney employed in a lawyer's professional business organization is limited to responsibility for the attorney's own performance of professional services.

(3) UNACCEPTABLE ERRORS AND OMISSIONS COVERAGE. Errors and omissions coverage is insufficient to meet the requirements for limiting liability is the combined coverage of any insurance policy or surety bond is less than the full amount required by this rule or any higher statutory amount, or is subject to a deductible greater than ten per cent (10%) of the minimum amount of security necessary to meet the requirements of subsection (g)(2) of this rule, or is conditioned upon any contingency other than payment of the premium or fee or provides in any manner for less than the full amount of coverage required by this rule or any higher amount required by statute.

(h) Compliance with law and rules of court. The affairs of a lawyers' professional business organization shall be conducted in compliance with law and with the rules of this court. The organization shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, this court. Nothing in this rule shall affect or impair the disciplinary powers of this court over any lawyers' professional business organization or over any person licensed to practice in this state by this court.

(i) Attorney-client relationship unchanged. Nothing in this rule shall be construed to alter or affect the professional relationship between a person furnishing legal services and a person receiving such services, and all such professional relationships enjoyed under the laws of this state or the rules of this court, whether now in existence or hereafter enacted, shall remain inviolate.

(j) Discipline and enforcement. Any attorney who fails to comply in good faith with the provisions of this rule may be subject to investigation and discipline pursuant to the attorney discipline procedures set forth in Rule 2 of the rules of this court, provided that this shall not be construed as limiting the powers of the Bar, appropriate government agencies, interested parties and the courts of this state to enforce any statute and rules promulgated thereunder.

(*Amended December 5, 1979, effective December 5, 1979; further amended April 16, 1984, effective May 1, 1984; renumbered September 1984; further amended September 2, 1987, effective September 2, 1987; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994; further amended March 8, 1995, effective March 23, 1995; further amended June 17, 1999, effective July 1, 1999; further amended March 14, 2001, effective July 1, 2001.*)

Rule 7. SUPERVISED STUDENT PRACTICE OF LAW.

7.1. Definitions.

(a) A "law student intern" is a person who is enrolled and in good standing as an undergraduate at the University of Hawai‘i School of Law, who has completed legal studies amounting to one-third (1/3) of the requirements for graduation from that law school, who is enrolled in a clinical program at that law school, and with respect to whom the order referred to in Rule 7.3(b) is in effect.

(b) A "clinical program" is a practice-oriented law activity administered under the direction of a faculty member of the University of Hawai‘i School of Law, participation in which activity entitles qualified law students to receive academic credit

(c) A "supervising lawyer" is a member of the bar of this court who has been approved as a supervisor of law student interns by the University of Hawai‘i School of Law.

(*Renumbered September 1984.*)

7.2. Activities of law student interns.

(a) In connection with a clinical program, a law student intern may appear in any court or before any legislative or administrative tribunal in this state on behalf of a client, provided:

(1) that the client has consented in writing to such appearance; and

(2) that a supervising lawyer has indicated in writing approval of such appearance.

In every such appearance the law student intern shall be accompanied by a supervising lawyer, unless the court or tribunal consents to the law student intern appearing without a supervising lawyer.

(b) Unless prohibited by statute or ordinance, a law student intern may also appear in any matter on behalf of the United States, the State of Hawai‘i, or any state political subdivision, subject to the requirements of subsection (a) of this section.

(c) In every such appearance by a law student intern, the written consents and approvals referred to in subsection (a) of this section shall be filed in the record of the court or tribunal and shall be brought to the attention of the judge or presiding officer.

(*Renumbered September 1984.*)

7.3. Qualification procedures for law student interns.

(a) To become a law student intern, each eligible person shall file with the clerk of this court a typewritten application setting forth, together with such other information as may be required by this court or the Bar, the applicant's name and age, that the applicant is enrolled and in good standing as an undergraduate at the University of Hawai‘i School of Law, that the applicant has completed one-third (1/3) of the requirements for graduation therefrom, that the applicant has read and is familiar with the Hawai‘i Rules of Professional Conduct attached to Rule 2, and that the applicant is enrolled in a clinical program at the University of Hawai‘i School of Law. A letter from the dean of the University of Hawai‘i School of Law certifying that the applicant is in good academic standing as stated in the application and appears to be competent to engage in the activities of law student interns as defined by this rule must accompany each application.

(b) The clerk of this court shall review applications and make recommendations to this court as to which applicants should be designated as qualified law student interns. This court shall issue an order designating each applicant which it finds to be qualified as a law student intern, subject to taking such oath of office as may be prescribed.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994.*)

7.4. Duration of law student intern authorization and compensation limitations.

(a) Unless the order referred to in Rule 7.3(b) is revoked or modified, it shall remain in effect so long as the law student intern is enrolled as an undergraduate in a clinical program at the University of Hawai‘i School of Law, and shall cease to be in effect upon any termination of such enrollment. However, after the clinical semester ends, the law student intern may continue to represent a client in cases initiated before the semester ended if such representation is deemed appropriate by the supervising lawyer.

(1) The certification referred to in Rule 7.3(a) may be withdrawn by the dean by notice to that effect to the clerk of this court. It is not necessary that such notice state the cause for withdrawal. Upon receipt of such notice, the order referred to in Rule 7.3(b) shall be automatically revoked.

(2) The order referred to in Rule 7.3(b) with respect to any law student intern may be terminated by this court for cause consisting of violation of this rule or any act or omission which, on the part of an attorney, would constitute misconduct and ground for discipline under Rule 2. The effectiveness of such order may be suspended by this court during any proceedings to terminate such order.

(b) A law student intern shall neither ask for nor receive any compensation or remuneration of any kind for services rendered to a client, but this shall not prevent a lawyer, a law school or public agency from paying compensation to a law student intern or from making such charges for services as such lawyer, law school or public agency may otherwise properly require.

(*Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992.*)

7.5. Other law student intern activities.

(a) Any law student intern may, with the knowledge and approval of a supervising lawyer and the client, engage in the following activities:

(1) Counseling and advising clients, interviewing and investigating witnesses, negotiating the settlement of claims, and preparing and drafting legal instruments, pleadings, briefs, abstracts and other documents. Any document requiring signature of counsel, and any settlement or compromise of a claim, must be signed by a supervising lawyer.

(2) Rendering assistance to clients who are inmates of penal institutions or other clients who request such assistance in preparing applications for and supporting documents for post-conviction legal remedies.

(*Renumbered September 1984.*)

7.6. Supervision of law student practice.

The supervising lawyer shall counsel and assist the law student who practices law pursuant to this rule, and shall provide professional guidance in every phase of such practice with special attention to matters of professional responsibility and legal ethics.

(*Renumbered September 1984.*)

7.7. Miscellaneous.

(a) Law students practicing pursuant to this rule shall be governed by the rules of conduct applicable to lawyers generally, but the termination of practice referred to in Rule 7.4(a)(2) shall be the exclusive sanction for disciplinary infractions which occur during authorized practice; except that such disciplinary infractions may be considered by a court or agency authorized to entertain applications for admission to the practice of law.

(b) Nothing contained in this rule shall affect the right of any person to do anything that he or she might lawfully do were this rule not in existence.

(c) Immunity. Except for use by an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the applicant is admitted to practice or seeks to practice, applications and other information submitted to this court shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of this court and the staff performing duties and functions under this rule shall be immune from suit and liability for any conduct in the course of their official duties.

(*Amended December 29, 1980, effective January 1, 1981, renumbered September 1984; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992.*)

Rule 8. JUDICIAL DISCIPLINE.

8.1. Organization of commission.

(a) Membership; chairperson. The supreme court shall appoint a commission to be known as the Commission on Judicial Conduct which shall consist of seven members; three members shall be attorneys licensed to practice in the State of Hawaiʻi, one of whom shall be designated by this court as chairperson, and four members shall be citizens who are not judges, retired judges or lawyers, one of whom shall be designated by this court as vice-chairperson.

(b) Terms. All members shall be appointed to staggered three-year terms; however, to maintain a commission with staggered terms, initial appointments may be for less than three years.

(c) Compensation. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(d) Quorum; number of votes for action. A majority of the total membership of the Commission shall constitute a quorum for the transaction of business, and the concurrence of a majority of the total membership shall be necessary to validate any action.

(e) Meetings. Meetings of the Commission shall be held at the call of the chairperson or upon the written request of a majority of the members of the Commission.

(f) Annual report. At least once a year the Commission shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the supreme court.

(g) Non-participation by members. Commission members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case or orderly operation of the Commission, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary.

(*Renumbered September 1984; amended April 26, 1993, effective April 26, 1993.*)

8.2. Jurisdiction and powers of commission.

(a) Powers in general. The Commission shall have the power to:

(1) receive information, allegations, and complaints;

(2) make preliminary evaluations;

(3) screen complaints;

(4) conduct investigations;

(5) conduct hearings;

(6) recommend dispositions to the supreme court concerning allegations of judicial misconduct or physical or mental disability of judges; and

(7) issue advisory opinions.

(b) Persons Subject to Discipline. The conduct of any justice or judge, full-time or part-time, shall be subject to the jurisdiction of the Commission, regardless of the justice's or judge's status at the time the conduct is reported to the Commission, including, but not limited to, having resigned or retired from office and provided the conduct is reported to the Commission no later than ninety (90) days after the judge leaves office.

(c) Jurisdiction of Commission.

(1) Notwithstanding any provisions of Rule 2.1 of the Rules of the Supreme Court, only this Commission shall have the authority to exercise powers specified in Rule 8.2 with respect to conduct, whether or not related to mental or physical competence, of any sitting full-time or part-time justice or judge occurring during the time of, and prior to, his or her tenure on the bench except as otherwise provided in this subsection (c).

(2) Notwithstanding any provisions to the contrary contained herein regarding the jurisdiction of the Commission:

(i) The Disciplinary Board of the Hawai'i Supreme Court may conclude any formal disciplinary proceedings as to said conduct which occurred prior to the judicial tenure of any full-time or part-time justice or judge, and any petition to the supreme court to determine whether any justice or judge is incapacitated from continuing the practice of law by reason of physical infirmity or illness or because of the use of drugs or intoxicants, if such formal disciplinary proceedings were instituted or such petition was filed prior to the judicial tenure of the justice or judge.

(ii) If a sitting part-time district judge is practicing law as an attorney, the Disciplinary Board of the Hawai'i Supreme Court shall have jurisdiction of such judge with respect to said conduct as an attorney and to petition the supreme court to determine whether such judge is incapacitated from continuing the practice of law by reason of physical infirmity or illness or because of the use of drugs or intoxicants and shall exercise the authority and powers prescribed under Rule 2 of the Rules of the Supreme Court.

(iii) The Disciplinary Board shall transmit its findings of fact, conclusions of law, disciplinary action or recommendations, and the entire record, in formal disciplinary proceedings under (i) and (ii) above to the Commission and if it is satisfied, and if it wishes to take action, the Commission may apply the same findings to support its recommendation for disciplinary action against a justice or judge involved in the said proceedings subject, however, to subsection (4) of this subsection (c).

(3) The resignation or retirement of any full-time or part-time justice or judge before or after the Commission or the Disciplinary Board, or both, have commenced an investigation or a proceeding, and before final action by the supreme court upon any recommendation, shall not deprive the Commission, the Disciplinary Board or the supreme court of jurisdiction.

(4) The Commission shall treat the findings of the Disciplinary Board made as a result of proceedings within (2)(i) or (2)(ii) above, as a new complaint which shall be reviewed in accordance with Rule 8.6, subsections (b) through (i), and if the Commission determines that further proceedings should be had, the Commission shall proceed with the complaint in accordance with Rule 8.7, and with any other applicable provisions of Rule 8.

(d) Subpoena and discovery.

(1) In matters before the Commission the chairperson may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court to any other court.

(e) Rules of procedure and forms. The Commission shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings.

(*Renumbered September 1984; amended April 26, 1993, effective April 26, 1993*; *further amended December 21, 2004, effective January 1, 2005.)*

8.3. Immunity.

Members of the Commission and special counsel appointed by the supreme court shall be absolutely immune from suit for all conduct in the course of their official duties.

(*Renumbered September 1984; amended April 26, 1993, effective April 26, 1993.*)

8.4. Confidentiality.

(a) In general. All proceedings involving allegations of misconduct by or disability of a judge shall be kept confidential until and unless the supreme court enters an order for the imposition of public discipline or the judge requests that the matter be public. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceedings.

(b) Disclosure. This provision shall not be construed to automatically deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or to law enforcement agencies investigating qualifications for government employment; such information may be released upon concurrence of the Commission or by order of the supreme court.

(c) Public statements by commission. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the Commission may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without pre-judgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his or her comments and criticisms prior to its release, but the Commission in its discretion may release the statement as originally prepared.

(*Renumbered September 1984.*)

8.5. Grounds for discipline.

(a) In general. Grounds for discipline shall include:

(1) Conviction of a felony;

(2) Willful misconduct in office;

(3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;

(4) Conduct prejudicial to the administration of justice or conduct that brings the judicial office into disrepute;

(5) Any conduct that constitutes a violation of the Code of Judicial Conduct; or

(6) Any conduct before assuming full-time duties that constitutes a violation of the Hawai‘i Rules of Professional Conduct.

(b) Proceedings not substitute for appeal. In the absence of fraud, corrupt motive, or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he or she understands it. Claims of error shall be left to the appellate process.

(*Renumbered September 1984; amended effective September 16, 1997.*)

8.6. Complaint procedure.

(a) Initiation of procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including written complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

(3) Upon request of the chief justice of the supreme court, the Commission shall make an investigation under this rule of the conduct or physical or mental condition of a judge.

(b) Privilege. A qualified privilege shall attach to a complaint submitted to the Commission or testimony related to the complaint, and any civil action predicated on such complaint instituted against any complainant or witness, or their counsel, shall be subject to said qualified privilege.

(c) Discretionary notice. Notice that a complaint has been made may be given to the judge named in the complaint.

(d) Screening of complaints. Upon receipt of a complaint, the Commission shall determine whether such complaint warrants investigation and evaluation. Complaints determined to be frivolous, unfounded or outside the jurisdiction of the Commission shall not be investigated.

(e) Mandatory notice. After the determination that a complaint warrants investigation and evaluation, notice that a complaint has been made shall be given to the judge.

(f) Preliminary investigation and evaluation. Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the Commission shall conduct a prompt, discreet, and confidential investigation and evaluation. The Commission may delegate one of its members to conduct such investigation and evaluation.

(g) Determination. After conclusion of the investigation and evaluation, the Commission shall determine:

(1) That there is insufficient cause to proceed against the judge; or

(2) That there is sufficient information to make a disciplinary recommendation to the supreme court; or

(3) That further proceedings regarding the complaint are necessary.

(h) Insufficient cause to proceed.

(1) Upon determination that there is insufficient cause to proceed, the file shall be closed. If previously notified of a complaint, a judge shall be notified that the file has been closed.

(2) A closed file may be referred to by the Commission in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

(i) Dispositions in lieu of further proceedings. Even though the Commission does not find that further proceedings are necessary, it may recommend to the supreme court that the court:

(1) Issue a private reprimand; or

(2) Inform or admonish the judge that his or her conduct is or may be cause for discipline; or

(3) Direct professional counseling or assistance for the judge; or

(4) Impose conditions on the judge's conduct.

(*Renumbered September 1984.*)

8.7. Appointment of special counsel. Upon determining that further proceedings should be had, the Commission shall request the supreme court to appoint special counsel to further investigate the matter. Counsel, upon further investigation, shall either report to the Commission that a formal hearing is not necessary or institute formal disciplinary proceedings as provided in Rule 8.9. The Office of Disciplinary Counsel may be appointed as special counsel, subject to the approval of the Chairperson of the Disciplinary Board.

(*Renumbered September 1984; amended effective September 16, 1997.*)

8.8. Determination on report of special counsel. Upon receipt of special counsel's report that a formal hearing is not necessary, the Commission shall determine whether to close the file as provided by Rule 8.6(h) or make a recommendation to the supreme court as provided by Rule 8.6(i).

(*Renumbered September 1984.*)

8.9. Formal hearing.

(a) Complaint or statement. Formal disciplinary proceedings shall be instituted by special counsel by filing with the Commission a detailed sworn complaint signed by the complainant. If a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by special counsel. Where more than one act of misconduct is alleged, each shall be clearly set forth. A copy of the complaint or statement of allegations shall be served upon the judge.

(b) Answer. The judge shall serve his or her answer upon special counsel and file the original with the Commission within 20 days after the service of the complaint or statement of allegations unless such time is extended by the chairperson. In the event the judge fails to answer, the charges shall be deemed admitted; provided, however, that a judge who fails to answer within the time provided may obtain permission of the chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

(c) Termination after answer. At any time after service of the answer, the Commission may terminate the proceeding and dismiss the complaint, and shall in that event give notice to each complainant and to the judge that it has found insufficient cause to proceed.

(d) Notice of hearing. Following service of the answer the matter may be set for hearing before the Commission. The Commission shall serve a notice of hearing upon special counsel and the judge, or his or her counsel, stating the date and place of the hearing.

(e) Presentation; cross-examination; evidence. At the hearing, the judge shall be entitled to counsel of his or her own choice, shall be entitled to compel by subpoena the attendance and testimony of witnesses and to provide for the inspection of documents, books, accounts, and other records, and shall have a full opportunity to confront and cross-examine the complainant and other witnesses presented by special counsel and to present evidence on his or her own behalf.

The Commission shall not be bound by the formal rules of evidence, but shall admit only trustworthy evidence. The Commission shall not rely upon any evidence outside the formal record in reaching its decision.

(f) Findings and recommendations. All findings of the Commission shall be supported by clear and convincing evidence. The Commission shall, in every case, submit a report containing its findings and recommendations, together with a record of its proceedings, to the supreme court within 60 days after the conclusion of its hearing. The Commission may recommend to the supreme court any of the following sanctions:

(1) Removal;

(2) Retirement;

(3) Imposition of limitations or conditions on the performance of judicial duties, including suspension with or without pay;

(4) Private reprimand;

(5) Public censure, suspension from the practice of law, or disbarment; or

(6) Any combination of the above sanctions.

(*Renumbered September 1984; amended effective September 16, 1997.*)

8.10. Review by Supreme Court. After the filing of the Commission's report a copy thereof shall be served on the judge. The judge may file exceptions to the report within 20 days from the date of service of a copy thereof or within an additional period not to exceed 20 days granted by the court for good cause shown. Within 60 days after the filing of the report and the filing of exceptions, if any, the judge shall file an opening brief pursuant to the rule governing civil appeals; and other briefs may be filed and oral argument may be had as therein provided. Upon conclusion of the proceedings, the court shall promptly enter an appropriate order.

(*Renumbered September 1984.*)

8.11. Charge against supreme court justice. Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that the member being charged shall be automatically disqualified. A panel of at least three justices shall hear the matter. In the event that there are less than three justices remaining on the court, the chief justice or the most senior associate justice remaining on the court shall appoint a judge of the intermediate court of appeals, a circuit court judge, a retired justice of the supreme court, or any combination thereof to sit in the matter.

(*Renumbered September 1984.*)

8.12. Interim sanctions.

(a) Suspension for felony. A judge shall be suspended with or without pay immediately by the supreme court without necessity of Commission action, upon the filing of an indictment or complaint charging him or her with a felony under state or federal law. Such suspension shall not preclude action by the Commission with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge.

(b) Suspension for misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his or her ability to perform the duties of his or her office, may be grounds for immediate suspension with or without pay by the supreme court, without necessity of Commission action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not

preclude action by the Commission with reference to the conduct upon which the charge was based.

(c) Misdemeanor suspension review. Any judge suspended under Rule 8.12(b) shall be given a prompt hearing and determination by the supreme court upon his or her application for review of the interim suspension order.

(d) Other interim suspension.

(1) Interim suspension, with or without pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.

(2) Upon a determination by the Commission of a judge's incompetence, there shall be an immediate interim suspension, with or without pay, pending final disposition by the supreme court.

(e) Disability suspension. A judge who claims that a physical or mental disability prevents his or her assisting in the preparation of a defense in a proceeding under these rules shall be placed on interim suspension, with or without pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue.

(*Renumbered September 1984; amended May 4, 1993, effective May 4, 1993.*)

8.13. Special provisions for cases involving mental or physical disability.

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the Commission shall follow the same procedures that it employs with respect to discipline for misconduct.

(b) Representation by counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the supreme court shall appoint an attorney to represent him or her.

(c) Medical privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his or her medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.

(*Renumbered September 1984.*)

8.14. Involuntary retirement.

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the supreme court. If attempts to convince a judge to retire voluntarily fail, then special counsel shall be appointed to file a formal complaint, and the Commission shall hold a hearing and submit a report with recommendations to the supreme court.

(b) Effect of involuntary retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the court.

(*Added June 1, 1979, effective June 1, 1979, amended December 5, 1979, effective December 5, 1979, renumbered September 1984; further amended March 7, 1985, effective March 7, 1985.*)

8.15. Advisory Opinions.

(a) Rendering Opinions. The Commission may render advisory opinions concerning proper interpretations of the Code of Judicial Conduct and, if appropriate, publish and disseminate the same.

(b) Who May Request; Types of Opinions. Requests for advisory opinions may be made by a judge, the Administrative Director of Courts, and the Commission itself.

(i) INFORMAL WRITTEN OPINIONS. If the Commission finds the opinion of limited significance, it may provide an informal written opinion to the questioner. Such opinion shall be kept confidential, except as may be permitted to be disclosed by this court, the judge to whom the opinion is directed, or the Commission.

(ii) FORMAL WRITTEN OPINIONS. If, however, the Commission finds the opinion of sufficient general interest and importance, it shall render a formal written opinion, which shall be published and disseminated to all judges and to whomever the Commission deems advisable. In issuing formal written opinions, the Commission shall undertake, in good faith, reasonable efforts to retain the confidentiality of the identity of the judge to or about whom the opinion is directed.

(iii) DISCUSSIONS. In addition to the foregoing, the Commission, either through the Commission itself or person designated by the Commission, may discuss with any judge any issue relating to the Code of Judicial Conduct in order to assist the judge in determining whether any conduct of the judge would or would not be appropriate. However, any such discussion by the Commission or its designee will not be deemed to be the giving of an advisory opinion by the Commission and will not be binding on the Commission in any proceeding being brought against that judge or any judge who may rely on such discussion.

(c) Use and Effect. An advisory opinion rendered by the Commission shall be admissible in any disciplinary proceeding involving a judge to whom the opinion is directed. It shall be a complete defense to any complaint under these rules that the judge complained against acted in accordance with and reliance on an advisory opinion issued to the judge that certain specified conduct by the judge would not constitute a violation of the Code of Judicial Conduct. In addition, it shall be a mitigating factor in the consideration of any complaint under these rules that the judge complained against acted reasonably in reliance on any formal or informal advisory opinion not directed at the judge.

(d) Modification. The Commission may, at any time, including as a result of disciplinary proceedings, modify or amend any advisory opinion; provided, that no such modification or amendment shall be applied retroactively in any such disciplinary proceedings.

(*Added April 26, 1993; effective April 26, 1993.*)

8.16. Effect of Hawai‘i Electronic Filing and Service Rules.

Documents filed and notices given in accordance with the Hawai‘i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, notice, and service requirements of any part of this Rule 8.

(Added August 30, 2010, effective September 27, 2010.)

Rule 9. TIME LIMITS FOR DISPOSITION.

Within 12 months after oral argument of a case or matter or if it has been submitted on the briefs, within 12 months of the date oral argument would have been scheduled, the supreme court, insofar as practicable, shall issue an opinion or order disposing of the case or matter.

(*Renumbered September 1984; as amended and effective March 11, 1996.*)

Rule 10. LAWYERS' FUND FOR CLIENT PROTECTION.

10.1. Purpose; trustees; administration.

(a) Purpose; definition of "dishonest conduct." The purpose of the Lawyers' Fund for Client Protection of the Hawai‘i Supreme Court ("Fund") is the reimbursement, to the extent and in the manner provided by these rules, of losses caused by the dishonest conduct of members of the bar of this State.

The words "dishonest conduct" as used herein mean wrongful acts committed by an attorney in the manner of defalcation or embezzlement of money; or the wrongful taking or conversion of money, property or other things of value; or refusal to refund unearned fees received in advance where the attorney performed no services or such an insignificant portion of the services that the refusal constitutes a wrongful taking or conversion of money; or borrowing money from a client without intention or reasonable ability or reasonably anticipated ability to repay it.

(b) Appointment of trustees. The supreme court shall appoint five trustees from nominations made by the Nominating Committee of the Hawai‘i Supreme Court to administer and operate the Fund in accordance with these rules. The trustees shall consist of three lawyers and two nonlawyers appointed by the supreme court for staggered five-year terms.

(c) Organization; meetings. The trustees shall organize annually and shall then elect from among their number a chairperson and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chairperson. Three trustees shall constitute a quorum

and may transact all business except as may be otherwise provided by this rule or by the rules and regulations promulgated by the trustees.

(d) Rules. The trustees shall adopt rules, consistent with these rules and subject to meaningful review, analysis, input, and comment by the Hawai‘i State Bar and ultimate approval of the supreme court, governing the administration of the Fund, the procedures for the presentation, consideration and payment of claims, and the exercise of their investment powers.

(e) Reimbursement. The trustees shall serve without compensation but shall be entitled to reimbursement from the Fund for their expenses reasonably incurred in the performance of their duties.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended May 5, 1988, effective May 5, 1988; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; amended effective March 10, 1998; amended April 8, 2002, effective July 1, 2002; further amended February 16, 2005, effective July 1, 2005.*)

10.2. Deleted.

10.3. Payment of claims.

(a) Eligible claims. The trustees may consider for payment all claims resulting from the dishonest conduct of a member of the Bar of this State, provided that:

(1) Said conduct was engaged in while the attorney was licensed member of the Bar of this State; and

(i) the claim originates from the attorney’s providing legal services in the State of Hawai‘i; and

(ii) the claimant engaged the attorney's services in the State of Hawai‘i; and

(iii) the dishonest conduct occurred in the State of Hawai‘i; and

(2) The claim arises out of an attorney-client or fiduciary relationship customary to the practice of law such as where an attorney acts as an administrator, executor, trustee of an express trust, guardian or conservator; and

(3) The attorney has (one of the following):

(i) died;

(ii) been adjudicated a bankrupt;

(iii) been adjudicated an incompetent;

(iv) been disbarred or suspended from the practice of law, or voluntarily resigned from the practice of law;

(v) become a judgment debtor of the claimant, which adjudication shall have been based upon dishonest conduct while acting as specified in Rule 10.3(a) (2) and which judgment or judgments remain unsatisfied in whole or in part;

(vi) been adjudged guilty of a crime, which adjudication shall have been based upon the dishonest conduct of the attorney; or

(vii) left the jurisdiction and cannot be found.

(4) In addition to satisfaction of one of the requirements for eligibility under Rule 10.3(a) (3), the trustees may require that the application demonstrate either:

(i) that the alleged defalcating attorney is a judgment debtor of the claimant, the judgment or appeal is final, and the claimant has exhausted all remedies in attempting to collect the judgment; or

(ii) that the alleged defalcating attorney is without assets or that under the circumstances it is otherwise impracticable to obtain a judgment against the attorney, and there is no applicable insurance or bond.

(b) Nonreimbursable losses. The following losses shall not be reimbursable:

(1) Losses of a spouse, children, parents, grandparents, siblings, partners, associates, employers and employees of, or business entities or trusts owned or beneficially owned by an attorney causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogated interest;

(3) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar insurance or surety contract.

(c) Discretion of trustees. In cases of extreme hardship, or if other interests of justice so warrant, the trustees may, in their discretion, recognize a claim which would otherwise be excluded under these rules.

(d) Consideration of trustees. In making determinations on claims, the trustees shall consider, among other appropriate factors, the following:

(1) The amounts available and likely to become available to the Fund for the payment of claims and the size and number of claims which are likely to be presented;

(2) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;

(3) The degree of hardship suffered by the claimant as a result of the loss;

(4) The degree of negligence, if any, of the claimant which may have contributed to the loss;

(5) The existence of any collateral source for the reimbursement of the claim.

(e) Limitation on payments. The trustees shall, by rules, fix the maximum amount which any one claimant may recover from the Fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

(f) Rights to fund. No claimant or any other person or organization shall have any right in the Fund as beneficiary or likewise. All awards by the trustees are a matter of discretion.

(g) Conditions of payment. The trustees may require as a condition of payment that the claimant execute such instruments, take such action or enter into such agreements as the trustees require, including assignments, subrogation agreements, trust agreements, exhaustion of other remedies, and promises to cooperate with the trustees in making or prosecuting claims or charges against any person.

(h) Attorney's fee. No attorney representing a claimant before the Fund shall receive a fee for the attorney's services unless authorized by the rules and regulations of the trustees and upon their express direction.

(i) Investments. Losses arising from investment advice given by the claimant's attorney, although such advice may result in loss of the claimant's monies, is not in and of itself a ground for seeking reimbursement from the Fund. Claims arising out of investments may be considered for payment. However, when an attorney advises a claimant to invest funds he or she obtained from the claimant, by virtue of an attorney-client or fiduciary relationship, in a business or other venture, and the attorney then converts the claimant's monies, in no event will interest on such investments be reimbursable. All payments on the investment, representing principal or interest received by the claimant, will be deducted from the claimant's initial investment in order to determine, for Fund purposes, the valid amount of the claim.

(*Added July 29, 1981, effective July 29, 1981; amended May 24, 1984, effective May 24, 1984; renumbered September 1984; amended effective May 5, 1988; further amended February 7, 1992, effective February 7, 1992; further amended August 14, 2000, effective January 1, 2000; further amended October 15, 2012, effective January 1, 2013.*)

10.4. Powers and duties of the trustees. The trustees shall have the following duties and responsibilities:

(a) The Fund shall be audited annually and at such other times as the supreme court shall direct. The audits shall be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the trustees to the Hawaiʻi State Bar and the supreme court reviewing in detail the administration of the Fund during the preceding year;

(b) The trustees may apply to the supreme court for interpretations of these rules and of the extent of their powers and duties and for advice regarding the proper administration of the Fund;

(c) The treasurer shall maintain the assets of the Fund in a separate account and shall disburse monies therefrom only upon the action of the trustees pursuant to these rules. The treasurer shall obtain a bond annually covering all of the trustees with such surety as may be approved by the trustees and in such amount as they may fix, or the treasurer may transfer the assets of the Fund to the custody of a corporate trustee authorized to do business as a trust company in the State of Hawaiʻi;

(d) To cause to be investigated all applications for reimbursable losses brought to the trustees' attention;

(e) To determine the order and manner of payment of applications for reimbursement;

(f) To reject or allow applications in whole or in part to the extent that funds are available;

(g) To use or employ the Fund for any of the following purposes within the scope of the Fund's objectives:

(1) to make reimbursements on approved applications;

(2) to purchase insurance to underwrite such losses in whole or in part;

(3) to invest such portions of the Fund as may be permitted under state law for such entities;

(4) to deposit monies in interest-bearing accounts in federally insured banks, federally insured savings and loan associations, or any other federally insured financial institution located in the state; the interest or other income will be a part of the Fund;

(h) To provide a full report of the Fund's activities at least annually to the supreme court and make other reports of its activities and publicize its activities as the trustees may deem advisable;

(i) To enforce claims which the Fund may have for restitution;

(j) To employ and compensate consultants, counsel and employees as the trustees deem appropriate;

(k) To make reimbursements for administrative expenses incurred in the administration of the Fund;

(l) (i)to develop an annual budget for operating the Fund and performing the functions of the trustees, to develop appropriate financial policies for managing all funds received by the trustees, and to propose an annual fee;

(ii) to submit, no later than September 15 each year, the developed budget, financial policies, and fee structure to the Hawai‘i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai‘i State Bar prior to submission to the supreme court;

(iii) to receive written comments, if any, from the Hawai‘i State Bar regarding the budget, financial policies, and fee structure;

(iv) to reply in a timely fashion in writing to any written comments from the Hawai‘i State Bar regarding section (iii), provided the comments were received no later than October 15; and

(v) to submit, no later than November 1 each year, the budget, financial policies, and annual fee along with any and all written comments received from the Hawai‘i State Bar, and any replies thereto, to the supreme court for its review and approval.

(m) Trustees shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case, or the orderly operation of the Fund, the supreme court may appoint, for that case only, one or more ad hoc Trustees as it deems necessary. Each ad hoc Trustee shall fulfill all the responsibilities of a Trustee.

(*Added July 29, 1981, effective July 29, 1981; amended May 24, 1984, effective May 24, 1984; renumbered September 1984; further amended July 1, 1986, effective July 1, 1986; further amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended April 8, 2002, effective July 1, 2002; further amended June 25, 2003, effective July 1, 2003; further amended April 4, 2005, effective July 1, 2005.*)

10.5. Claims for reimbursement.

(a) Application. The claimant shall prepare or cause to be prepared an application for reimbursement containing the following information:

(1) The name and address of the attorney;

(2) The amount of the loss claimed;

(3) The date or period of time during which the alleged loss was incurred;

(4) Name and address of the claimant;

(5) A general statement of facts relative to the claim;

(6) Verification by the claimant;

(7) Other information which the trustees require.

(b) Investigation. The trustees shall conduct an investigation to determine whether the claim is for a reimbursable loss and to guide the trustees in determining the extent, if any, to which reimbursement shall be paid. A copy of the application shall be personally served upon the attorney or sent by certified mail to the attorney's last known address as shown on the attorney's registration statement on file with the Disciplinary Board of the Hawai‘i Supreme Court ("Disciplinary Board"). When the claim is for a nonreimbursable loss, or otherwise barred, no further investigation need be conducted.

(c) Report. Reports on investigations shall be submitted to the chairperson within a reasonable time.

(d) Action by trustees upon report. The trustees may approve, reject or modify the reimbursement, or order further investigation as they deem necessary. Any trustee may request that testimony or documentary information be presented. Absent such recommendation or request, claims shall be processed on the basis of information contained in the report. The alleged defalcating attorney or the attorney's personal representative will be given an opportunity to be heard by the trustees.

(e) Notice of determination. Written notice of the trustees' determination shall be provided the claimant and the attorney whose alleged conduct gave rise to the claim, or their representatives. The claimant and the attorney whose alleged conduct gave rise to the claim may request that the trustees reconsider the determination by filing a written request to the Fund no later than 20 days following receipt of the trustees' determination. The request shall be supported by written reasons for being given an opportunity to be heard by the trustees. If such a request for reconsideration is timely made, the trustees shall set a date, time and place for hearing. The trustees, in their discretion, may limit the scope of any such hearing and the trustees shall not order any reimbursement from the Fund until after the requested hearing has been concluded. If the claimant or the attorney whose alleged conduct gave rise to the claim failed to request reconsideration, or the original determination of the trustees is confirmed, the trustees' determination shall be final.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended May 5, 1988, effective May 5, 1988; further amended February 7, 1992, effective February 7, 1992.*)

10.6. Subpoenas; noncompliance.

The trustees or an individual trustee or an attorney designated to act on behalf of the trustees, upon determining that any person is a material witness to the determination of a claim made against the Fund, may issue a subpoena in the name of the clerk of the supreme court requiring such person to appear and testify either before the trustees or an individual trustee, or before an attorney designated to act on behalf of the trustees, at the time and place specified therein. The subpoena may also command such person to produce books, papers, documents or other objects designated therein. Subpoenas shall be issued in the manner prescribed by Rule 2, Rules of the Supreme Court of Hawai‘i.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended January 24, 2008, effective July 1, 2008.*)

10.7. Subrogation for reimbursement made.

(a) Subrogation; legal action by Fund. If reimbursement is granted, the Fund shall be subrogated in the amount of the reimbursement and the trustees may bring such action as is deemed advisable against the attorney, the attorney's assets or the attorney's estate. The action may be brought either in the name of the claimant or in the name of the Fund. The claimant shall be required to execute a subrogation agreement. Upon commencement of an action by the trustees under subrogation rights, the trustees shall advise the reimbursed claimant, who may then join in such action to pursue a claim for the claimant's loss in excess of the amount of the reimbursement from the Fund.

(b) Direct action by claimant. The claimant may bring an action for recovery of unreimbursed losses directly against the attorney, the attorney's assets or the attorney's estate if the trustees have not done so within six months of execution of the subrogation agreement.

(c) Claimant's right to amounts in excess of subrogated amount. Any amounts recovered from the attorney, either by the Fund or by the claimant, in excess of the amount to which the Fund is subrogated, less the Fund's actual costs of such recovery, shall be paid to or retained by the claimant as the case may be.

(d) Written agreement by claimant prior to receipt of payments. Before receiving a payment from the Fund, the claimant shall execute and deliver to the trustees a written agreement stating that if the claimant or the claimant's estate should ever receive any restitution from the attorney or the attorney's estate, the claimant shall agree to repay to the Fund (up to the amount of the original reimbursement from the Fund) that amount by which the original reimbursement from the Fund plus the present restitution from the attorney or the attorney's estate

exceeds the claimant's actual loss, as that actual loss is or was determined by the trustees.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended February 7, 1992, effective February 7, 1992.*)

10.8. Confidentiality.

(a) General rules of confidentiality. The application, the trustee's final determination awarding or disallowing reimbursement of a claim, and the amount of the award are public records. The following records shall be confidential and shall not be accessible to the public: the work product of the Lawyers' Fund for Client Protection, reports and materials obtained from any governmental and/or judicial agency which restricts public access to the records, records of the Office of Disciplinary Counsel and the Disciplinary Board, and any other records obtained from confidential sources. Records which contain confidential and restricted information may be made available to the public with the confidential and restricted information deleted. All other records, may be made available to the public. This provision shall not be construed to deny access to relevant information by agencies as the trustees shall authorize or the release of statistical information which does not disclose the identity of the parties.

(b) Exchange of information and sharing of investigative and administrative resources with Disciplinary Board. All claims for reimbursement submitted to the trustees shall be forwarded to the Chairperson of the Disciplinary Board for institution of whatever proceedings before the Disciplinary Board which the Chairperson of the Disciplinary Board deems appropriate. The Chairperson of the Disciplinary Board may, in the Chairperson's discretion, allow the trustees to have access, during the trustees' investigation of any claim for reimbursement from the Fund, to Disciplinary Board files which pertain to the alleged loss. The trustees shall have access to the investigative and administrative resources of the Disciplinary Board, and may also, upon agreement between the trustees and the Disciplinary Board, be housed within the office facilities of the Office of Disciplinary Counsel, but the trustees shall reimburse the Disciplinary Board for the cost of such resources and housing as determined by the Disciplinary Board.

(c) Communication with the claimant and the attorney claimed against. A claimant and the attorney claimed against shall be advised of the status of the trustees' consideration of the claim and shall be advised of the final determination of the trustees.

(d) Public statements by trustees. In any case, the trustees may issue statements as deemed appropriate in order to confirm the pendency of the investigation or to clarify the procedural aspects of the proceedings. The statement shall be first submitted to the attorney involved or the attorney's representative for any comments and criticisms prior to its release, but the trustees in their discretion may release the statement as originally prepared.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended March 18, 1993, effective March 18, 1993.*)

10.9. Immunity.

Testimony and information given regarding claims submitted to the Fund shall be absolutely privileged and no lawsuit based on the testimony and information may be instituted, except that the trustees may take such steps as are necessary to protect the interests of the Fund. Trustees and the trustees' staff and the Board of Directors and members and staff of the Hawai‘i State Bar shall be immune from suit and liability for any conduct in the course of their official duties.

(*Added July 29, 1981, effective July 29, 1981; renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992.*)

10.10. Automatic suspension.

(a) Upon payment by the Fund of any claim, the Trustees shall file proof of the payment with the supreme court.

(b) When proof of the payment is filed with the supreme court, the supreme court shall, unless the interests of justice indicate otherwise, immediately suspend the attorney involved from the practice of law in this state until the Fund receives payment for all reimbursements made by the Fund, together with interest and the Fund's costs and attorney's fees.

(c) The supreme court may set aside such order suspending the attorney from the practice of law in the interest of justice and for good cause shown.

(*Added February 7, 1992, effective February 7, 1992; amended January 24, 2008, effective July 1, 2008.*)

Rule 11. INTEREST-BEARING TRUST ACCOUNTS PROGRAM.

(a) Purpose. The purpose of the Interest-Bearing Trust Accounts Program (the Program) is to provide for funds for Hawai‘i Justice Foundation programs designed to improve the education of the public and the practicing bar on matters of legal significance, to provide legal aid to persons of limited means, to enhance delivery of competent legal services, to make student loans, and to implement other programs aimed at improving the administration of justice in Hawai‘i.

(b) Required participation. Participation in the Program for attorneys shall be mandatory. Unless exempted under Rule 11(e) of this Rule, every attorney admitted to practice law in the State of Hawai‘i or every law firm composed in whole or in part of such attorneys that receives client funds shall establish and maintain an interest- or dividend-bearing trust account for pooled clients' funds (IOLTA Trust Account or IOLTA account) that complies with the provisions of Rule 11(c)(1) and (2) of this Rule. In addition, lawyers and law firms shall establish additional interest-bearing trust accounts (Client Trust Account) for individual clients, as provided by Rule 11(c)(1) and (3) of this Rule.

(c) Administration.

(1) DEPOSITS OF CLIENTS' FUNDS.

(A) All funds of clients paid to an attorney or law firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable interest- or dividend-bearing trust accounts (Trust Accounts) in the State of Hawai‘i. No funds belonging to the attorney or law firm shall be deposited into a Trust Account except:

(i) Funds reasonably sufficient to pay account charges not offset by interest shall be deposited therein; and

(ii) Funds belonging in part to a client and in part presently or potentially to the attorney or law firm must be deposited therein but the portion belonging to the attorney or law firm shall be withdrawn when due unless the right of the attorney or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) With respect to all trust accounts, the attorney or law firm shall comply with the Hawai‘i Rules of Professional Conduct and the Hawai‘i Rules Governing Trust Accounting relating to preserving the identity of funds and property of a client.

(C) Every IOLTA Trust Account shall be established with an eligible financial institution. To qualify as eligible, the financial institution must:

(i) be certified by the Hawai‘i Justice Foundation to be in compliance with Rule 11(c) of this Rule;

(ii) be a federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in Hawai‘i, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in Hawai‘i; and

(iii) allow funds in each Trust Account to be subject to withdrawal upon request and without delay.

(D) Participation by eligible financial institutions in the IOLTA program is voluntary. An eligible financial institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(i) The eligible financial institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts. For this purpose, an eligibility qualification shall be disregarded if it is inconsistent with Rule 11(c)(1)(D)(iv) of this Rule or if it otherwise unreasonably discriminates against IOLTA

accounts. Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. For example, if a bank's sweep account qualifies for IOLTA investment under Rule 11(c)(1)(D)(iii) of this Rule and carries the highest rate of interest or dividends available to an IOLTA customer under the foregoing rules, the bank must pay at least that rate (discounted for allowable reasonable fees under Rule 11(c)(1)(D)(iv)) of this Rule on that customer's IOLTA account, whether or not it is in fact established as a sweep account. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account.

(ii) An eligible institution may choose to pay the highest interest or dividend rate in Rule 11(c)(1)(D)(i) of this Rule, less allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, if any, on an IOLTA account in lieu of establishing it as a higher rate product.

(iii) The IOLTA Trust Account shall be an interest- or dividend-bearing account. Interest- or dividend-bearing account means: (a) an interest-bearing checking account; (b) a checking account paying preferred interest rates, such as money market or indexed rates; (c) a government interest-bearing checking account such as accounts used for municipal deposits; (d) a business checking account with an automated investment sweep feature which is a daily (overnight) financial repurchase agreement or an open-end money market fund; or (e) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers. A daily financial institution repurchase agreement must be fully collateralized by securities, of which at least 80% shall be U.S. Government Securities, and may be established only with an eligible institution that is well-capitalized or adequately capitalized as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be comprised of at least 80% U.S. Government Securities, (or repurchase agreements fully collateralized by securities, of which at least 80% shall be U.S Government Securities), must hold itself out as a money-market fund as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. United States Government Securities are defined to include debt securities of Government Sponsored Enterprises, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(iv) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees are defined as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administrative fee. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. No fees or service charges shall be collected from the principal balance deposited in an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account, including bank overdraft fees and fees for checks returned for insufficient funds. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(v) As an alternative to the rates required under Rule 11(c)(1)(D)(i) of this Rule, an eligible institution may choose to pay on IOLTA accounts a safe harbor net yield rate that is initially set to be equal to 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month. This initial safe harbor rate of 70% of the Federal Funds Target Rate may be adjusted once a year by the Foundation, upon 90 days' written notice to financial institutions participating in the IOLTA program. The safe harbor rate amount is net of all allowable reasonable fees under Rule 11(c)(1)(D)(iv) of this Rule.

(E) Every Trust Account shall stand in the name of the lawyer or law firm and shall be clearly labeled and designated as either an IOLTA Trust Account or a Client's Trust Account established under this Rule.

(F) The financial institution shall notify the Office of Disciplinary Counsel directly of any overdraft on a Trust Account or of any check drawn on a Trust Account that is declined for non-sufficient funds.

(2) IOLTA TRUST ACCOUNTS. Every IOLTA Trust Account shall comply with the following provisions:

(A) The financial institution in which the IOLTA Trust Account is established shall be directed and required by the attorney or law firm:

(i) to remit monthly all interest or dividends, as the case may be, on the account's average daily balance in the IOLTA Trust Account, or as otherwise computed in accordance with the institution's standard accounting practice, less allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, if any, charged against the account, to the Hawai'i Justice Foundation;

(ii) to transmit monthly to the Hawai'i Justice Foundation, in an electronic format to be specified by the Hawai'i Justice Foundation, a report containing the name of the lawyer or law firm for whom the remittance is sent, the account number, the amount of remittance attributable to each IOLTA account, the period for which remittance is made, the average daily balance in the IOLTA Trust Account, the rate of interest applied, the total amount of interest earned, the allowable reasonable fees as set forth in Rule 11(c)(1)(D)(iv) of this Rule, assessed against the account, if any, the net amount of interest remitted, and such other information as is reasonably required by the Hawai'i Justice Foundation; and

(iii) to transmit monthly to the depositing lawyer or law firm a report in accordance with the normal procedures for reporting to its depositors.

(B) The attorney or law firm shall deposit no clients' funds in an IOLTA Trust Account unless such funds are either nominal in amount or to be held for a short period of time such that the funds cannot earn income in excess of the costs to secure that income. Funds of different clients may be commingled in an IOLTA Trust Account.

(C) The attorney or law firm shall maintain as an IOLTA Trust Account all clients' funds that are either nominal in amount or to be held for a short period of time.

(D) No client may

(i) individually elect whether the client's funds should be deposited in an IOLTA Trust Account,

(ii) receive interest or dividends earned on funds in an IOLTA Trust Account, or

(iii) compel an attorney or law firm to invest funds that are either nominal in amount or to be held for a short period of time in a Client Trust Account.

(E) The determination of whether a client's funds are nominal in amount or to be held for a short period of time rests exclusively in the sound judgment of each attorney or law firm. No charge of ethical impropriety or other breach of professional conduct shall result from an attorney's exercise of good faith judgment in that regard.

(F) In determining when a client's funds are to be deposited in an IOLTA Trust Account, a lawyer or law firm may be guided by the following considerations:

(i) The amount of interest which the funds would earn during the period they are expected to be deposited;

(ii) The cost of establishing and administering the account, including the cost of the lawyer or law firm's services, accounting fees, and tax reporting requirements;

(iii) The amount of funds involved, the period of time such funds are expected to be held, and the financial institution's minimum balance requirements and service charges;

(iv) The capability of the financial institution to calculate and pay interest to individual clients; and

(v) The likelihood of delay in the relevant transaction or proceeding.

(G) The Hawai‘i Justice Foundation shall make available to attorneys, at least annually, a list of all financial institutions that offer IOLTA accounts and have been certified as eligible institutions by the Hawai‘i Justice Foundation under Rule 11(c)(1)(C)(i) of this Rule as meeting the qualifying requirements under this Rule as an IOLTA depository. Lawyers and/or law firms shall be entitled to rely on the most recently published list for purposes of compliance with Rule 11(c)(1)(C), (D), and (F), and Rule 11(c)(2)(A) of this Rule. Prior to its removing any financial institution from the list of certified financial institutions, the Hawai‘i Justice Foundation shall first provide the institution with notice of the corrective action needed to maintain its eligibility certification and shall provide the institution with sufficient time to reach compliance. In the event any financial institution is to be removed from the list of certified financial institutions, the Hawai‘i Justice Foundation shall give attorneys sufficient notice and time in order to move their IOLTA accounts to another certified financial institution.

(H) *Confidentiality*. The Hawai‘i Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this Rule.

(3) NON-IOLTA CLIENT TRUST ACCOUNTS. All client funds shall be deposited in an IOLTA Trust Account specified in Rule 11(c)(2) of this Rule, unless the lawyer or law firm deposits them in a separate interest-bearing account for a particular client or client's matter, on which the interest, net of any service or other charges or fees imposed by the financial institution in connection with the account, will be paid to the client. Interest so earned must be held in trust as the property of each client in the same manner as is provided in this Rule for the principal funds of the client.

(d) Use of funds derived from IOLTA trust accounts. The net earnings derived from funds of a client deposited in an IOLTA Trust Account shall be used to pay for the following programs of the Hawai‘i Justice Foundation:

(1) improve the administration of justice, including but not limited to means such as the following:

(A) provide continuing legal education;

(B) provide legal education to laypersons;

(C) supply legal aid to persons of limited means;

(D) provide for competent delivery of legal services to those who are eligible therefor; and

(E) provide aid to law reform projects.

(2) provide student loans; and

(3) support other programs for the benefit of the public and specifically approved by the Hawai‘i Supreme Court.

(e) Exemptions. An attorney or the law firm with which the attorney is associated may be exempt from the requirements of this Rule if:

(1) the nature of the attorney's or law firm's practice is such that the attorney or law firm never receives client funds that would require a Trust Account;

(2) the attorney is engaged in the practice of law in another jurisdiction and not engaged in the practice of law in this state;

(3) the attorney is a full-time judge, government attorney, military attorney, or inactive attorney; or

(4) the Hawai‘i Justice Foundation's Board of Directors, on its own motion, has exempted the attorney or law firm from participation in the Program for a period of no more than 2 years when service charges on the attorney's or law firm's Trust Account equal or exceed any interest generated.

(f) Attorney filings and records.

(1) ATTORNEY FILINGS. Each attorney or law firm shall file, in conjunction with the annual Hawai‘i State Bar registration process, a certificate of annual compliance with trust accounting procedures, as required by Rule 7 of the Hawai‘i Rules Governing Trust Accounting, or a certification that the attorney or law firm is exempt from such a filing under Rule 11(e) of this Rule. The certification shall contain the name of the lawyer or law firm listed on the account, the trust account name, the trust account number, the financial institution’s name and address, and the attorney’s

Bar number. Failure to provide the certification within the registration period may result in administrative suspension from the practice of law in this state in the manner provided in Rule 17(d)(4)(A) of these Rules until the attorney complies with the requirements of this Rule. No other accounting or record-keeping requirements with respect to trust accounts under this Program shall be imposed on attorneys other than the minimum requirements expressed in this Rule, Rule 1.15 of the Hawai'i Rules of Professional Conduct, and the Hawai'i Rules Governing Trust Accounting. All information in the certificate of annual compliance shall be provided electronically by the Hawai'i State Bar to the Hawai'i Justice Foundation and the Office of Disciplinary Counsel, and shall be kept confidential.

(2) RECORDS. An attorney or law firm shall preserve or cause to be preserved the records of all financial depository institution accounts or other records pertaining to the funds of a client maintained by the attorney or law firm in compliance with this Rule and Rule 4 of the Hawai'i Rules Governing Trust Accounting for a period of not less than 6 years subsequent to the completion of the employment to which they relate or the last transaction on the account, whichever comes last. Failure to file the required certificate, filing of a trust account certificate showing non-compliance with either this Rule or Rule 4 of the Hawai'i Rules Governing Trust Accounting, or return of a trust account check for insufficient funds shall be good cause for the Office of Disciplinary Counsel to undertake an investigation and pursue disciplinary action, if appropriate, against the attorney or law firm.

(g) Rules and Policies of the Hawai'i Justice Foundation. To effectuate reporting by financial institutions of required trust account information, and to ensure the timely payment of the interest earned on IOLTA accounts to the Foundation, the Hawai'i Justice Foundation shall have authority to promulgate its own rules and policies consistent with this Rule, subject to the approval of the supreme court.

(h) Implementation. Implementation will be effected through the application of this Rule by the Hawai'i State Bar, as overseen and approved by the supreme court.

(*Added September 22, 1983, effective September 22, 1983; renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; amended May 15, 1991, effective July 1, 1991; further amended December 6, 1993, effective January 1, 1994; further amended June 16, 2008, effective July 1, 2008; further amended June 25, 2008, effective July 1, 2008; further amended October 21, 2013, effective January 1, 2014; further amended October 22, 2015, effective January 1, 2016.)*

Rule 12. SUPREME COURT LAW LIBRARY.

(a) Availability. The law library of the supreme court is a legal reference library and shall be available to all who have need of its resources for legal research and study.

(b) Regulations. The law library shall be governed by the regulations made by the law librarian with the approval of the chief justice.

(c) Withdrawals. No books or other publications shall be withdrawn from the law library except as authorized under the regulations.

(d) Penalties. Violation of any regulations shall subject the offending party to liability for loss or damage, summary suspension or permanent deprivation of the facilities and privileges of the law library, or such other disciplinary action as shall be determined by the supreme court.

Rule 13. REPEALED.

(Amended December 6, 1993, effective January 1, 1994; Repealed September 5, 1996, effective October 1, 1996.)

Rule 14. LICENSING OF FOREIGN LAW CONSULTANTS.

A person who is admitted to practice in a foreign country as an attorney or counselor at law or the equivalent and who complies with the provisions in this rule for licensing of foreign law consultants may render legal services in the State of Hawai‘i to the extent allowed by this rule.

(*Added May 12, 1986, effective July 1, 1986.*)

14.1. Eligibility.

In its discretion the court may license to practice as a foreign law consultant, without examination, an applicant who:

(a) for a period of not less than five of the seven years immediately preceding the date of application:

(1) has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country, and

(2) has engaged either (A) in the practice of law in such country or (B) in a profession or occupation that requires admission to practice and good standing as an attorney or counselor at law or the equivalent in such country;

(b) possesses the good moral character required for admission to practice in this court;

(c) intends to practice as a foreign law consultant in the State of Hawai‘i; and

(d) is over 26 years of age.

(*Added May 12, 1986, effective July 1, 1986.*)

14.2. Applications.

(a) Every applicant for a license as a foreign law consultant shall file with the clerk of this court, a verified typewritten application in duplicate on the form provided by the clerk of this court. At minimum, the application form shall require each applicant to set forth:

(i) the applicant's name, age, and last place of residence,

(ii) the character and term of the applicant's law study,

(iii) the name of each institution of law the applicant attended and graduated from, and with what degree,

(iv) the names of all courts or other licensing authorities to which the applicant has made applications to practice,

(v) the dates the applicant has taken examinations,

(vi) the dates the applicant was admitted to practice as an attorney or counselor at law or equivalent or as a foreign law consultant,

(vii) whether the applicant has been the subject of any investigation or proceeding for professional misconduct or whether the applicant has ever been rejected upon an application to practice before any court or other licensing authority, and

(viii) Such other information as the Board of Examiners requires to make recommendations to this court about the character and fitness of the applicant.

A filing fee in such amount as shall be prescribed by the court shall accompany each application. The cost of a character report or investigation shall be borne by the applicant.

(b) The application shall be accompanied by the following documents, together with duly authenticated English translations if they are not in English:

(1) A certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive body of such authority and which shall be accompanied by the official seal, if any, of such authority and which shall certify:

(A) as to the authority's jurisdiction in such matters,

(B) as to the applicant's admission to practice in such foreign country and the date thereof and as to the applicant's good standing as an attorney or counselor at law or the equivalent therein, and

(C) as to whether any charge or complaint has ever been filed against the applicant with such authority, and, if so, the substance of each such charge or complaint and the adjudication or resolution thereof.

(2) A letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or court of general original jurisdiction of such foreign country, certifying to the applicant's professional qualifications, together with a certificate from the clerk of such authority or of such court, as the case may be, attesting to the office held by the person signing the letter and the genuineness of the person's signature.

(3) A letter of recommendation of at least two attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, setting forth the length of time, when, and under what circumstances they have known the applicant, and their appraisal of the applicant's moral character.

(4) A letter of recommendation of at least two attorneys of this court, setting forth the length of time, when, and under what circumstances they have known the applicant, and their appraisal of the applicant's moral character.

(5) Such other relevant documents or information as may be called for by the court or by the board of examiners.

(c) The statements contained in the application and supporting documents shall be investigated by the board of examiners, who shall report the results of their investigation to the court, together with their recommendations thereon. Prior to the grant of any license, the court shall be satisfied of the good moral character of the applicant.

(d) In considering whether to license an applicant as a foreign law consultant under these rules, the court may in its discretion take into account whether a Hawai‘i attorney would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission, if there is pending with the court a request to take this factor into account from a Hawai‘i attorney actively seeking to establish such an office in that country which raises a serious question as to the adequacy of the opportunity for such a Hawai‘i attorney to establish such an office.

(*Added May 12, 1986, effective July 1, 1986; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended September 28, 1990, effective September 28, 1990; further amended February 7, 1992, effective February 7, 1992; further amended June 5, 1992, effective June 5, 1992; further amended effective December 27, 1996.*)

14.3. Hardship waiver.

Upon a showing that strict compliance with the provisions of subsection 14.1(a) or 14.2(b) of this rule would cause the applicant unnecessary hardship, or upon a showing of exceptional professional qualifications to practice as a foreign law consultant, the Board may in its discretion waive or vary the application of such provisions and permit the applicant to make such other showing as is satisfactory to the Board.

(*Added May 12, 1986, effective July 1, 1986; amended October 27, 1989, effective November 1, 1989, subject to transitional orders.*)

14.4. Scope of practice.

A person licensed as a foreign law consultant under this rule may render legal services in the State of Hawai‘i, subject, however, to the limitations that such person shall not:

(a) appear for another person as attorney in any court or before any magistrate or other judicial officer in the State of Hawai‘i, or prepare pleadings or any other papers in any action or proceeding brought in any such court or before any such judicial officer, except as authorized in Rule 1.9 relating to admission pro hac vice; or

(b) prepare any deed, mortgage, assignment, discharge, lease, agreement of sale or any other instrument affecting title to real estate located in the United States of America; or

(c) prepare:

(1) any will or trust instrument effecting the disposition of any property located in the United States of America and owned by a resident thereof; or

(2) any instrument relating to the administration of a decedent's estate in the United States of America; or

(d) prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of such a resident; or

(e) render professional legal advice on the law of the State of Hawai‘i or the United States of America or any other state or territory of the United States of America or the District of Columbia or any foreign country other than the country of admission as an attorney or counselor at law or the equivalent (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person admitted to the practice of law as an attorney in the State of Hawai‘i or such other state or territory or the District of Columbia or as an attorney or counselor at law or the equivalent in such other foreign country who has been consulted by the foreign law consultant in the particular matter at hand and who has been identified to the client by name; or

(f) in any way represent that such person is licensed as an attorney in the State of Hawai‘i, or as an attorney or foreign law consultant in another state or territory or the District of Columbia, or as an attorney or counselor at law or the equivalent in a foreign country, unless so licensed; or

(g) use any title other than "foreign law consultant"; provided that such person's authorized title and firm name in the foreign country in which such person is admitted to practice as an attorney or counselor at law or the equivalent may be used if the title, firm name, and the name of such foreign country are stated together with the title "foreign law consultant."

(*Added May 12, 1986, effective July 1, 1986; amended March 2, 2007, effective July 1, 2007.*)

14.5. Jurisdiction and Requirements.

(a) Each person licensed to practice as a foreign law consultant under these rules is subject to Rules 2, 10, 11, 14, 16, and 17 of these rules, including the Hawai‘i Rules of Professional Conduct, and shall be subject to the exclusive disciplinary jurisdiction of this court and the Disciplinary Board.

(b) Each person licensed to practice as a foreign law consultant under these rules shall execute and file with the Executive Director, in such form and manner as the court may prescribe:

(1) a statement that the foreign law consultant has read, and a commitment to observe Rules 2, 10, 11, and 14 of these rules, including the Hawai‘i Rules of Professional Conduct, as referred to in subsection 14.5(a) of this rule;

(2) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure such foreign law consultant's proper professional conduct and responsibility;

(3) a duly acknowledged instrument in writing setting forth such foreign law consultant's address within the State of Hawai‘i and designating the clerk of this court as such consultant's agent upon whom process may be served, with like effect as if served personally upon such consultant, in any action or proceeding thereafter brought against such consultant arising out of or based upon any legal services rendered or offered to be rendered by such consultant within or to residents of the State of Hawai‘i, whenever after due diligence service cannot be made upon such consultant at such address; and

(4) a commitment to notify the Executive Director and the court of any resignation or revocation of such foreign law consultant's admission to practice in the foreign country of admission, or of any censure, suspension, or expulsion in respect of such admission.

(*Added May 12, 1986, effective July 1, 1986; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended December 6, 1993, effective January 1, 1994; further amended effective December 27, 1996.*)

Rule 15. JUDICIAL FINANCIAL DISCLOSURE.

(a) Filing of annual financial disclosure statement. Every judge shall file in the supreme court clerk's office an annual financial disclosure statement on a form approved by the supreme court. The form may be completed and submitted electronically. This requirement applies to all full time and per diem judges, including justices of the supreme court, but does not apply to retired judges or justices called back for temporary service pursuant to Article VI, Section 2 of the State Constitution.

(b) Time for filing. The financial disclosure statement shall be filed on or before April 30 and shall cover the preceding calendar year or that portion of the year during which the judge held office.

(1) EXTENSIONS OF TIME. A judge may apply to the chief clerk of the supreme court for an extension of time to file the financial disclosure statement. An application for extension shall be submitted prior to the deadline for filing the statement. Upon receipt of the request, the clerk shall grant one extension of time to May 30. The clerk shall note on the record that the extension was granted.

(2) MONITORING BY CHIEF CLERK. The chief clerk of the supreme court shall make reasonable efforts to monitor the filing of statements under this rule. If a judge has defaulted, filed a late statement, or filed an obviously incomplete statement, the clerk shall promptly notify the judge in writing and shall transmit a copy of the notice to the Commission on Judicial Conduct. The failure of the clerk to give such notice shall not excuse a judge's failure to comply with this rule.

(c) Imposition of discipline for untimely or incomplete statements. A judge who fails to file a timely statement, or who files an incomplete statement, may be subject to discipline pursuant to the procedures set out in Rule 8 of the rules of this court. If however the Commission on Judicial Conduct determines that any default or deficiency was inadvertent or in good faith and that the default or deficiency was promptly corrected by the judge after being called to the judge's attention, the Commission, pursuant to Rule 8.6(g) (1), may decline to proceed against the judge.

(d) Matters to be disclosed. The statement shall include disclosure of the financial interests of the judge and the judge's spouse or domestic partner and any dependent children. Disclosure shall be made of the following types of interests:

(1) The source and amount of all income of $1,000 or more received, for services rendered, by the judge, the judge's spouse or domestic partner, or the judge's dependent child or by any other person for use or benefit of the judge, the judge's spouse or domestic partner, or the judge's dependent child during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed.

(2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business incorporated, regulated, or licensed to carry on business in the State that has a value of $5,000 or more or that is equal to 10 percent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed. For purposes of this rule, judges do not need to disclose interests held in the Employees' Retirement System of the State of Hawai‘i or other government pension plans.

(3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation.

(4) The name of each creditor to whom the value of $3,000 or more was owed during the disclosure period, the original amount owed, and the amount outstanding; provided that credit card debt need not be disclosed unless the balance owed exceeded $10,000 for 6 months or longer during the reporting period.

(5) The postal zip code for the location and the value of any real property in the State in which the person holds an interest valued at $10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of $5,000 or more.

(7) Gifts not excluded by Rule 3.13(c) of the Hawai‘i Revised Code of Judicial Conduct.

(8) Full-time judges' hours of approved judicial education.

(e) Disclosure of amounts by range; number of stock shares. Where an amount is required to be disclosed, the person disclosing may indicate whether the amount is at least $1,000 but less than $10,000; at least $10,000 but less than $25,000; at least $25,000 but less than $50,000; at least $50,000 but less than $100,000; at least $100,000 but less than $150,000; at least $150,000 but less than $250,000; at least $250,000 but less than $500,000; at least $500,000 but less than $750,000; at least $750,000 but less than $1,000,000; or $1,000,000 or more. An amount of stock may be reported by number of shares.

(f) Short form statement. The chief clerk of the supreme court shall provide a short form of statement for subsequent annual filings in those instances where the financial interests of the judge are substantially the same as those reported for the preceding disclosure period.

(g) Statements open to public inspection. Financial disclosure statements filed pursuant to this rule shall be available for public inspection in the supreme court clerk's office during normal business hours. Each judge's most recent long form statement and subsequent short form statement, if any, shall be accessible through the Judiciary's public web site. The Clerk shall redact from each disclosure statement account numbers and personal information, if provided, that could be used to steal identity, stalk, or put the judge or the judge's family members in danger, including residential addresses and telephone numbers, and the business address of a spouse or domestic partner, or child.

(h) Filing of statement not to limit ethical responsibilities of a judge. The filing of a financial disclosure statement pursuant to this rule shall not limit any ethical responsibilities of a judge with respect to financial activities and judicial disqualification. This rule shall not be construed as limiting the ethical or legal responsibilities of a judge as set out in the Hawai‘i Revised Code of Judicial Conduct, case law, statutes or any other rule of court.

(*Added January 21, 1988, effective January 1, 1988; first disclosure statements due April 30, 1989; amended November 7, 2001, effective January 1, 2002; further amended June 19, 2002, effective July 1, 2002; further amended November 25, 2008, effective January 1, 2009; further amended December 17, 2008, effective January 1, 2009; further amended August 7, 2009, effective January 1, 2010; further amended January 22, 2010, effective January 22, 2010; further amended April 9, 2010, effective April 9, 2010*; *further amended January 22, 2010, effective January 1, 2011; further amended August 24, 2010, effective January 1, 2011.)*

Rule 16. ATTORNEYS AND JUDGES ASSISTANCE PROGRAM.

16.1. Purpose; scope.

(a) The purpose of the Attorneys and Judges Assistance Program ("AAP") is to provide immediate and continuing assistance to attorneys who practice law in the State of Hawai‘i, judges of the courts of the State of Hawai‘i, and law students of the University of Hawai‘i at the Richardson School of Law (law students) who suffer from problems, disability or impairment which affect their professional performance for any reason ("impairment"), including but not limited to excessive use of alcohol or drugs ("substance abuse"), physical or mental illness, or other infirmity. Professional performance is affected when an attorney, judge, or law student is incapable of devoting the time and attention to, and providing the quality of service in, his or her law practice, judicial duties, or law studies which is necessary to protect the interest of a client, litigant, or law school career.

(b) The AAP shall consist of at least the following categories of programs.

(1) VOLUNTARY PROGRAM. A voluntary program addressing "self-referrals" entering treatment without the formal prior intervention of the AAP.

(2) INTERVENTION PROGRAM. A program primarily addressing attorneys, judges, and law students who are not "self-referrals" and who have not yet been the subject of a complaint that warrants a disciplinary petition, but whose impairment affects their professional performance and may put them at risk of disciplinary action if the impairment continues.

(c) AAP shall not provide treatment to impaired attorneys, judges, and law students but shall instead provide education and guidance concerning substance abuse, refer impaired attorneys, judges, and law students to appropriate substance abuse and/or mental health treatment providers, and provide emotional support to impaired attorneys, judges, and law students.

(*Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.*)

16.2. Attorneys and Judges Assistance Program Board.

(a) The supreme court shall appoint from nominations submitted by the Nominating Committee of the Hawai‘i Supreme Court a board to be known as the "Attorneys and Judges Assistance Program Board of the Hawai‘i Supreme Court" ("Board") which shall consist of nine (9) members, one of whom shall be designated by the Board as chairperson. Six (6) members shall be attorneys licensed to practice in the State of Hawai‘i and three (3) members shall be judges of the State of Hawai‘i.

(b) All members shall be appointed to staggered three-year terms; however, to maintain a board with staggered terms, initial appointments may be for less than three years. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(c) Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case, or the orderly operation of the Board, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary. Each ad hoc member shall fulfill all the responsibilities of a Board member.

(d) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these rules, including the power and duty:

(1) To take such action as shall be appropriate to effectuate the purposes of these rules.

(2) To appoint an administrator (whether an individual or a professional assistance organization) as may from time to time be required to properly perform the functions hereinafter prescribed. The administrator is hereinafter referred to as "Director." The Director shall implement and administer all of the programs under this rule.

(3) To adopt rules of procedure governing the Board and committees which are not inconsistent with these rules.

(4) To receive from the Bar the fees collected under Rule 17(d)(3)(D); to prepare and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit; and to prepare an annual budget for the expenditure of those funds; to develop appropriate financial policies for managing all of the funds received by the Board; and to propose an annual fee as follows:

(i) submit, no later than September 15 each year, the developed budget, financial policies, and fee structure to the Hawai‘i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai‘i State Bar prior to submission to the supreme court;

(ii) to receive written comments, if any, from the Hawai‘i State Bar regarding the budget, financial policies, and fee structure;

(iii) to reply in a timely fashion in writing to any written comments from the Hawai‘i State Bar regarding section (ii), provided the comments were received no later than October 15; and

(iv) to submit, no later than November 1 of each year, the budget, financial policies, and annual fee along with any and all written comments received from the Hawai‘i State Bar, and any replies thereto, to the supreme court for its review and approval.

(*Added effective July 7, 1989; amended February 7, 1992, effective February 7, 1992; amended April 8, 2002, effective July 1, 2002; amended May 12, 2003, effective July 1, 2003; further amended October 16, 2007, effective December 1, 2007; further amended June 27, 2012, effective July 1, 2012.*)

16.3. The director.

The Director shall be a trained counselor or an attorney who is a recovering substance abuser and has not used alcohol or drugs for at least five years. A "trained counselor" shall have education, training or experience in the evaluation, counseling or management of persons who are impaired due to substance abuse or physical or mental illness. The Director shall administer the AAP and shall perform such duties as directed by the Board.

(*Added effective July 7, 1989.*)

16.4. Voluntary program.

(a) The Director shall administer the Voluntary Program of the AAP in accordance with policies and procedures adopted by the Board.

(b) The Director shall provide a source of evaluation and treatment for attorneys, judges, and law students who, on a strictly voluntary basis, desire to avail themselves of such services.

(c) Attorneys, judges, and law students who voluntarily seek assistance from the AAP shall be evaluated, provided education and guidance concerning substance abuse, referred to appropriate substance abuse or mental health treatment providers, and provided emotional support by attorneys and judges who are recovering substance abusers.

(*Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.*)

16.5. Intervention program.

(a) The Director shall establish a Lawyer Volunteer Committee. Each person appointed to the Lawyer Volunteer Committee shall be an attorney, judge or trained counselor.

(b) Intervention is defined as the process of interrupting impairment by utilizing information, confrontation, counseling and motivation techniques to facilitate entry into diagnosis, treatment and rehabilitation.

(c) The Lawyer Volunteer Committee is established as a committee to utilize intervention exclusively with attorneys, judges, and law students who are impaired to facilitate their entry into diagnosis, treatment and rehabilitation.

(d) The Director and/or Lawyer Volunteer Committee shall review all information submitted regarding potentially impaired attorneys, judges, and law students and make a determination of the appropriateness of intervention.

(*Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.*)

16.6. Confidentiality; privilege not to disclose.

(a) The identity of any person who provides information to the Director or Lawyer Volunteer Committee shall be confidential and shall not be subject to discovery or subpoena.

(b) All records and information maintained by the Director, the Lawyer Volunteer Committee or their agents, employees or members relating to matters that are being or have been reviewed and evaluated by the Director or Committee shall be confidential and shall not be revealed to the Board, the supreme court or any other person and shall not be subject to discovery or subpoena; provided, however, that the Director may compile and disclose to the Board statistical information, devoid of all identifying data, relating to the AAP.

(c) A participant in the AAP has a privilege to refuse to disclose and to prevent any other person from disclosing information provided to or maintained by the AAP. A "participant" shall include, but not be limited to, the Director, any employee or agent of the AAP, members of the Board, members of the Lawyers Volunteer Committee, and attorneys, judges, and law students seeking assistance under the AAP.

(Added effective July 7, 1989; amended December 12, 2006, effective January 1, 2007.)

16.7. Immunity.

Notwithstanding any other provision of law or rule to the contrary, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person for providing information to the Director or Lawyer Volunteer Committee; and there shall be no monetary liability on the part of, and no cause of action for damages shall arise against any participant in the AAP for any act or proceeding undertaken or performed within the scope of Rule 16. For the purposes of this rule, the term "participant" includes employees, agents and volunteers of the AAP, and shall also be deemed to include the officers, directors and employees of the Hawai‘i State Bar Association.

(*Added effective July 7, 1989; amended February 7, 1992, effective February 7, 1992.*)

16.8. Deleted.

Rule 17. THE HAWAI‘I STATE BAR.

(a) Creation, name and status. Pursuant to the powers of the Hawai‘i Supreme Court to govern and control the practice of law in Hawai‘i, all persons admitted to the practice of law in this State are hereby unified into an organization to be known as the Hawai‘i State Bar. The Hawai‘i State Bar shall be and remain an independent, member-governed organization, and shall be organized and shall have the powers and responsibilities provided in this Rule and by subsequent order of this court not inconsistent herewith.

(b) Purposes and powers. The purposes of the Hawai‘i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State. The Bar shall have the power and responsibility for administering the statutes and rules of this court relating to governance of the profession (other than statutes and rules governing contempt of court), as follows: (1) The Bar shall assist this court in carrying out the functions under § 605-14, Hawai‘i Revised Statutes [Unauthorized Practice of Law], Rule 1 [Admissions], Rule 2 [Discipline], and Rule 10 [Lawyers' Fund for Client Protection] while preserving to this court at all times its ultimate authority over admission and discipline of attorneys licensed to practice in this State; and (2) the Bar shall assume primary responsibility for the other rules of the court and programs relating to the profession, its governance and improvement, including Rule 6 [Professional Corporations], Rule 11 [IOLTA], and Rule 16 [Substance Abuse]. In the latter category, the Bar shall have the power and responsibility not only of administration, but also of initiation of all changes and improvements therein, subject always to the oversight of this court through amendment of this Rule by the supreme court through the procedures set forth in Rule 17(g) of these Rules. In the endeavors set forth immediately above, the Bar shall have as its goal the improvement of the practice of law and the standards of professionalism of all attorneys in this State. The constitution and bylaws adopted by the Bar shall be binding on all members of the Bar in the same manner as the rules of this court.

(c) Membership and classes of members. All persons now or hereafter admitted to practice law before the Supreme Court of this State are declared to be members of the Hawai‘i State Bar. The Bar shall have the responsibility to establish classes of membership, including but not limited to a classification for active members consisting of all persons who are engaged in the practice of law in this State, either full-time or part-time, salaried or non-salaried, and a classification for judicial members, who shall not be obligated to pay dues at the same rate as active members and who shall not be entitled to run for elective office in the Bar.

(d) Member registration, information, assessment, suspension and status.

(1) MEMBER REGISTRATION. Each member of the Hawai‘i State Bar shall file an attorney registration statement and provide such information as the Board of Directors may require. A member shall notify the Hawai‘i State Bar, in writing, within 30 days of any change of such required information. At minimum, the registration statement shall require disclosure of:

(A) professional discipline or convictions in any jurisdiction, provided that convictions for offenses that are or would be classified under Hawai‘i law as petty misdemeanors, violations, or infractions need not be disclosed;

(B) hours of pro bono service and amount of related financial contributions for the previous year

if made as an alternative to pro bono service. Pro bono service hours and financial contributions reported by individual members in the attorney registration statement shall be confidential, and the Hawai‘i State Bar shall disclose such information only in aggregate reports of pro bono hours and related financial contributions for the entire membership;

(C) professional liability insurance, if any; provided that each active member who certifies the member is a government lawyer or in-house counsel and does not represent clients outside that capacity is exempt from providing professional liability insurance information; and

(D) the number of approved credit hours of Continuing Legal Education (CLE) completed in the previous year including the specific number of hours of ethics or professional responsibility education.

(2) INFORMATION TO DISCIPLINARY COUNSEL. The Hawai‘i State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board information regarding:

(A) the members' addresses for service of process as required by Rule 2.11 of these Rules;

(B) members' certification of annual compliance with trust accounting procedures as required by Rule 11(f) of these Rules;

(C) members' certification of compliance with accounting rules, as required by Rule 4 of the Hawai‘i Rules Governing Trust Accounting; and

(D) the disclosure of professional discipline or convictions required in subsection (1)(A) herein.

In addition, the Hawai‘i State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board information regarding individual members necessary to assist in furtherance of their duties under Rule 2 of these Rules.

(3) DUES, FEES AND CHARGES. Each member shall pay to the Bar the following dues, fees or charges:

(A) *Hawai‘i State Bar dues*. Annual dues as determined by the Board of Directors of the Bar.

(B) *Disciplinary Board fee*. The annual fee, determined in accordance with Rule 2.4(e)(8), shall be paid over by the Bar at least quarterly to the Disciplinary Board.

(C) *Lawyers' Fund for Client Protection fee*. The fee, determined in accordance with Rule 10.4(1), shall be paid over by the Bar at least quarterly to the Fund.

(D) *Attorneys and Judges Assistance Program fee*. The annual fee, determined in accordance with Rule 16.2(d)(4) shall be paid over by the Bar at least quarterly.

(4) ADMINISTRATIVE SUSPENSION.

(A) *Failure to file, cooperate with an audit, or pay*. Failure to file a properly completed attorney registration statement or to cooperate with an audit of the attorneys's continuing legal education hours conducted pursuant to Rule 22(d)(2) of these Rules, or nonpayment of any dues, fees, or charges required by these Rules, after 15 days written notice, shall result in automatic suspension by the Hawai‘i State Bar, of membership and the right to practice law until reinstatement. The Board of Directors of the Bar (1) may establish late processing fees and reinstatement charges and (2) may exempt from the registration requirements inactive attorneys who do not maintain active licenses and do not practice law in any other jurisdiction.

(B) *Failure to meet CLE requirements; notice of noncompliance; subsequent acquisition of hours; contest; suspension*. Within 60 days after the deadline for filing the disclosure required by Rule 17(d)(1)(D), the Executive Director of the Bar shall send a certified notice of noncompliance to each member whose disclosure shows the CLE requirement has not been met. A member who receives a certified notice of noncompliance may, within 15 days after the notice was mailed, submit to the Executive Director of the Bar evidence the member has acquired the mandated credit hours (which hours may not be counted for the current year); that the notice of noncompliance was issued erroneously, or that the member has resigned his or her license to practice law. A member who fails to prove the member acquired the mandated credit hours or that the notice of noncompliance was issued erroneously shall be automatically and immediately suspended by the Bar.

(5) REINSTATEMENT.

(A) *After failure to file or pay*. Any attorney suspended for failure to file a complete registration statement or pay dues and fees shall be reinstated by the Hawai‘i State Bar without further order upon:

(i) payment to the Bar of all arrears and a late processing and reinstatement fee in such amount as shall be determined by the Board of Directors of the Bar from time to time, and

(ii) satisfaction of such other requirements as may be imposed by the Board of Directors of the Bar and/or the supreme court.

(B) *After failure to comply with CLE requirements*. An attorney suspended for failure to comply with CLE requirements shall be reinstated upon sufficient proof the member has:

(i) completed 3 hours of CLE, which must include a minimum of 1 credit hour of approved ethics or professional responsibility education, and such hours shall not be counted for the current year;

(ii) paid the reinstatement fee set by the Bar; and

(iii) paid all required fees and dues.

(C) *Review by supreme court*. A member may petition the supreme court for review of the Executive Director's determination the member failed to prove completion of the mandated credit hours or that a notice of noncompliance was issued erroneously. Such petition shall not stay the effective date of the suspension.

(6) EXEMPTIONS.

(A) *Judges' and Retired Judges' exemption*. Full-time judges of courts of record of the State of Hawai'i and United States courts whose jurisdiction includes Hawai'i shall be exempt from the payment of the Disciplinary Board and Lawyers' Fund for Client Protection fees for such time as they serve in office. Retired judges called into service, who agree to serve without pay, and who engage in no other practice of law, shall be exempt from all dues, fees, and charges authorized by this rule.

(B) *Government attorneys' exemption*. Active attorneys who work exclusively for the federal government, the State of Hawai'i, or any political subdivision of the State of Hawai'i and who, except for permissible pro bono service, engage in no private practice of law whatsoever, whether full-time or part-time, compensated or uncompensated, shall be exempt from the payment of Lawyers' Fund for Client Protection fee for such time as they remain in those positions. This exemption shall be preserved for those government attorneys providing pro bono services, as defined in Rules of Professional Conduct 6.1, to non-government clients and who neither receive funds from, nor disburse funds to, clients in the provision of pro bono services. Any attorney who desires to be exempt from payment of such fee shall submit proof of the attorney's eligibility for exemption. An attorney who ceases to be exempt shall promptly pay the full amount of the most recent assessment.

(C) *"Inactive" members' exemption*. Attorneys on inactive status on December 31 of the calendar year preceding the assessment shall be exempt from the payment of Lawyers' Fund for Client Protection fees for such time as they remain inactive. Any attorney who desires to be exempt from payment of such fee shall submit proof of the attorney's eligibility for exemption. Attorneys who elect inactive status for medical reasons and attorneys who are transferred to inactive status pursuant to Rule 2.19 of the Rules of the Supreme Court shall be exempt from payment of fees for the Disciplinary Board, Lawyers' Fund for Client Protection, and Attorneys and Judges Assistance Program for such time as the medical condition exists. Any attorney who returns to active status shall promptly pay the full amount of the most recent assessment.

(7) PROOF OF PAYMENT. An attorney's cancelled check duly endorsed and negotiated by the Bar, or other confirmation of payment, shall constitute a receipt for payment of fees under this rule in order to enable the attorney on request to demonstrate compliance with the requirements of this rule.

(8) INACTIVE STATUS. An attorney who is in compliance with this rule, but who has retired or is no longer engaged in practice in this jurisdiction, or who is suffering from a medical condition, may elect inactive status and discontinue the practice of law in Hawai'i. The Bar shall not honor a voluntary election to inactive status for medical reasons unless the election is supported by a physician's affidavit or declaration that the attorney is experiencing a serious medical condition and the attorney's affidavit or declaration that the election is due to medical reasons and not solely for purposes of the exemption provided by paragraph (6) above. Upon the filing and recognition of an election to inactive status, together with a processing fee in such amount as the Board of Directors shall determine from time to time, the attorney shall be placed on inactive status and shall no longer be eligible to practice law. An attorney on inactive status shall be carried on the rolls of the Bar in such inactive classification(s) as may be provided in the bylaws of the Bar and, except as provided by paragraph (6), shall be required to pay

such dues or fees, if any, as the Board of Directors of the Bar may prescribe from time to time or as the supreme court may direct in accordance with the Rules of the Supreme Court of the State of Hawai‘i. The Bar shall advise the Disciplinary Board and the clerk of this court of the names of all attorneys who assume inactive status. Attorneys on inactive status shall remain subject to the jurisdiction of this court, the Disciplinary Board, the Lawyers' Fund for Client Protection, the Attorneys and Judges Assistance Program and the Bar.

(9) RETURN FROM VOLUNTARY INACTIVE STATUS. An attorney on voluntary inactive status or on voluntary inactive/medical status remains in that status until and unless the attorney requests and is granted reinstatement to the active roll. Reinstatement shall be automatic upon the payment of all dues and fees for the year the request is made and, for an attorney on voluntary inactive/medical status, submission of a physician’s affidavit or declaration that the attorney is capable of returning to work and the attorney’s affidavit or declaration that the reasons for the election of inactive/medical status no longer exist, unless the attorney is subject to an outstanding order of suspension or disbarment or transfer to inactive status under Rule 2.19.

(e) Composition, powers and responsibilities of governing body. The powers of the Hawai‘i State Bar shall be exercised by an elected Board of Directors composed of at least eleven members in addition to the President, President-Elect, Secretary and Treasurer, elected as follows: At least one active member from each of the First, Second and Fifth Judicial Circuits, plus at least one active member from the West Hawai‘i Region (consisting of the Districts of North Kohala, South Kohala, North Kona, South Kona and Kau) and one from the East Hawai‘i Region (consisting of the Districts of Hamakua, North Hilo, South Hilo and Puna) of the Third Judicial Circuit, elected by members of the Bar from each such respective circuit and region in such manner, for such terms and at such times as shall be provided in the bylaws of the Bar.

Any circuit or, in the case of the Third Circuit, the West Hawai‘i or East Hawai‘i Regions, having as of the first day of May in any year more than 300 active members in good standing who are domiciled or principally practice their profession in such circuit or region shall be entitled to one additional member of the Board for each additional 300 members or major fraction thereof, to be elected at the next regular election of the Bar. In the event that the membership in a circuit or region as of May 1 is such that it is no longer entitled to one or more additional members, the term of such additional member(s) of the Board shall end at the expiration of the term for which the member(s) was elected.

The Board shall have such additional *ex officio* members as may be provided in the bylaws of the Bar, including non-lawyers.

Members of the Board and staff shall be immune from suit and liability for any conduct in the course of their official duties.

(f) Powers and responsibilities of governing body. The Board of Directors shall be charged with the executive functions of the Bar and the enforcement of the rules of this court referred to in part (b) of this Rule above, as well as such bylaws and practices as the Board may from time to time adopt to assist it in the implementation of its responsibilities set forth in this Rule 17. The Board shall at all times direct its power to the advancement of the art of jurisprudence and the improvement of the administration of justice, and shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the State Bar not inconsistent with law, these Rules, or other rules of court.

(g) Adoption and amendment of rules regarding Bar. This rule is adopted by the Supreme Court of the State of Hawai‘i, and shall take effect November 1, 1989; provided, however, that implementation and transition to the unified Bar shall be as directed by subsequent order of this court. Rules 1, 2, 6, 7, 10, 11 and 14 are being amended by separate order to take effect on the same date. This rule and Rule 1 [Admissions], Rule 2 [Discipline], Rule 6 [Professional Corporations], Rule 7 [Student Practice], Rule 10 [Lawyers' Fund for Client Protection], Rule 11 [IOLTA], Rule 14 [Foreign Law Consultants], and Rule 16 [Substance Abuse], and any new rule of this court relating to the Bar, its authority, functions and duties shall be adopted, amended, or repealed after the effective date hereof only as follows. Prior written notice shall be given to the Board of Directors by the supreme court at least ninety days before the effective date of the proposed

adoption, amendment, or repeal. The Board shall determine whether the proposed adoption, amendment, or repeal shall be the subject of a public hearing, written comment, or other means of public or member participation, and, if so, the Board shall determine the means of public or member participation. In making its determinations, the Board shall consider the extent to which any proposal relates to the purposes and powers of the Bar, its authority, functions, and duties.

Notice of a public hearing shall be published in the Hawai‘i Bar Journal at least thirty days before the hearing, and may be published in other ways, such as a newspaper of general circulation. The notice shall state the time(s), date(s), and place(s) of the hearing(s). The notice shall include the text of the proposal, or a statement of the substance of the proposal, or a general description of the subjects involved and the purposes to be achieved. If the full text of the proposal is not printed in the Hawai‘i Bar Journal, the notice shall state how a copy of the proposal may be obtained at no cost. The notice shall state where and when people may submit written comments in addition to or in place of oral testimony. Hearings shall be held in each county in the State of Hawai‘i in which affected members reside to the extent deemed prudent by the Board. Audio or tele-video conferencing may be used in place of sending the hearing officer to each county.

If the Board of Directors determines that a public hearing shall not be held but comments will be accepted, notice of the proposed rule adoption, amendment, or repeal shall be given in the Hawai‘i Bar Journal at least thirty days before the proposal is to take effect. The notice shall inform the reader of the proposal in a manner similar to the notice of a public hearing, above, and shall state when and where comments shall be submitted.

The Board may allow for the submittal of comments in electronic or other forms.

All members of the Bar shall be afforded the opportunity to submit their data, views and arguments regarding the proposed adoption, amendment, or repeal at the public hearing, if any, or within any comment period specified in the notice; such data, views, and arguments shall be considered before the adoption, amendment, or repeal of the rule.

Should a polling of the members of the Bar result in a vote by a majority of the membership in opposition to the proposed adoption, amendment, or repeal, the adoption, amendment, or repeal shall not be made except by unanimous action of the supreme court.

(*Added October 27, 1989, effective October 29, 1989; amended February 7, 1992, effective February 7, 1992; further amended March 18, 1993, effective March 18, 1993; further amended August 1, 1994, effective August 1, 1994; further amended effective March 4, 1996; further amended November 10, 1999, effective January 1, 2000; further amended April 8, 2002, effective July 1, 2002; further amended May 12, 2003, effective July 1, 2003; further amended December 14, 2004, effective January 1, 2005; further amended June 25, 2007, effective July 1, 2007; further amended October 10, 2007, effective December 1, 2007; further amended December 16, 2008, effective January 1, 2009; further amended July 15, 2009, effective January 1, 2010; further amended September 22, 2009, effective January 1, 2010; further amended May 21, 2012, effective July 1, 2012; further amended June 21, 2012, effective July 1, 2012; further amended June 27, 2012, effective July 1, 2012; further amended October 3, 2012, effective January 1, 2013; further amended October 21, 2013, effective January 1, 2014; further amended November 12, 2014, effective January 1, 2015.*)

17.1. Child support enforcement.

(a) Suspension of license to practice law. Upon receipt by the Hawai‘i State Bar of a certification from the Child Support Enforcement Agency of the State of Hawai‘i (CSEA) that a person licensed to practice law in this jurisdiction is not in compliance with an order of support or is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the license of the person so certified shall be automatically suspended.

(b) Reinstatement to practice. A license suspended under subsection (a) of this rule shall not be reinstated until the CSEA or the Family Court issues, in writing, an authorization canceling the certification of noncompliance. Upon receipt of the authorization canceling the certification and payment of all fees and costs assessed, including arrears, by

the Hawai'i State Bar, the license of the attorney shall be automatically reinstated.

(c) Fee assessment. The Hawai'i State Bar may assess a reasonable fee for reinstating or restoring a license and may also charge the attorney a reasonable fee to cover the administrative costs incurred by the Hawai'i State Bar to comply with this rule.

(*Added January 5, 1998, effective January 1, 1998; amended June 25, 2007, effective July 1, 2007.*)

Rule 18. CALENDAR CONFLICTS BETWEEN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI'I AND HAWAI'I STATE COURTS.

(a) Counsel's duty to notify the courts. Within 48 hours after learning of a scheduling conflict between the United States District Court for the District of Hawai'i and any Hawai'i state court, counsel shall notify the state and federal judges involved in order that they may confer and resolve the conflict.

(b) Resolution of scheduling conflicts. Upon being advised of a scheduling conflict, the judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither the U.S. District Court nor any Hawai'i state court has priority in scheduling, the following factors, which are not all inclusive, may be considered in resolving the conflict:

(1) Whether a case is criminal, with attendant speedy trial concerns, or civil;

(2) Whether out-of-town witnesses, parties, or counsel are scheduled to attend a case;

(3) Age of the cases;

(4) Which matter was set first;

(5) Any other factor which weighs in favor of one case over the other.

(*Added July 30, 1990, effective September 1, 1990.*)

Rule 19. JUDICIAL PERFORMANCE PROGRAM.

19.1. Purposes of Judicial Performance Program.

The courts, the public and the legal profession have a vital interest in a responsive and respected judiciary. In its supervisory role and pursuant to its power over the court system and judges, the supreme court has determined that the periodic evaluation of a judge's performance is a reliable method to promote judicial excellence and competence. Accordingly, the supreme court hereby establishes the Judicial Performance Program (herein called "program"). The purposes of the program are:

(a) Improving individual judges' performance by providing information to the Chief Justice concerning their performance;

(b) Providing a potential source of information for application and retention decisions by the Judicial Selection Commission of the State of Hawai'i;

(c) Facilitating the Chief Justice's effective assignment and use of judges within the judiciary;

(d) Improving the design and content of judicial education programs; and

(e) Assisting the Chief Justice in discharging his or her responsibilities to administer the judiciary.

(*Amended effective June 14, 1996.*)

19.2. Jurisdiction.

All full-time, part-time and specially appointed justices and judges (herein called "judges") are subject to the exclusive evaluation processes of the supreme court and the special committee to be appointed by the Chief Justice to implement and administer the program.

However, nothing in this rule shall be construed to attempt to limit or infringe upon the proper proceedings or authority of the Commission on Judicial Conduct or the Judicial Selection Commission.

(*Amended June 19, 2002, effective July 1, 2002.*)

19.3. Special committee to implement and administer the program.

The Chief Justice shall appoint a special committee to implement and administer the program according to such procedures deemed necessary by the committee and approved by the supreme court. The committee shall consist of thirteen members - three nonlawyers, the administrative director of the judiciary, six members of the bar of the supreme court, and three judges. The Chief Justice shall designate the chair and vice-chair of the committee and the length of terms of all committee members.

The committee shall have the following powers and duties:

(a) To promulgate, subject to the supreme court's approval, the procedures to be followed by the committee in implementing and administering the program;

(b) To conduct periodic evaluation of performance of judges by use of appropriate evaluation procedures approved by the supreme court; and

(c) To take any other action reasonably related to the committee's powers and duties.

The administrative director of the judiciary shall provide staff and other assistance to the committee to enable the committee to fulfill its duties under this rule. The chair of the committee may appoint subcommittees (comprised only of committee members) as may be appropriate.

The committee shall act only with the concurrence of seven of its members. Members shall receive no compensation for their services but may be reimbursed for their travelling and other expenses incidental to the performance of their duties.

19.4. Judicial performance evaluation criteria.

The committee shall develop, implement and administer the program to ensure that judges are evaluated according to the following criteria:

(a) Legal ability;

(b) Judicial management skills;

(c) Comportment; and

(d) Any other criteria established by the committee and approved by the supreme court.

19.5. Confidentiality.

(a) Respondent confidentiality. The program shall be implemented and administered so that the identity of any person responding to the evaluation process is kept confidential from all judges. Further, the identity of persons responding to the evaluation process shall be privileged from discovery in any lawsuit, and shall not be available to any tribunal, board, agency, governmental entity, or person.

(b) Confidentiality of information and data. All information, questionnaires, notes, memoranda, data, and/or reports obtained, used, or prepared in the implementation and administration of the program shall be privileged from discovery in any lawsuit, and shall not be made available to any tribunal, board, agency, governmental entity, or person, other than the Chief Justice. Except as otherwise provided herein, the Chief Justice shall have the sole discretion and authority to determine how the above information can be used to fulfill the purposes of the program.

The committee members, and all persons who implement, administer, or tabulate data for the program shall be immune from subpoena with regard to their involvement in the program.

(c) Furnishing of information and data to the judicial selection commission. The Chief Justice shall provide such information and data concerning the performance of a judge to the Judicial Selection Commission as the Commission may request in writing. All information and data furnished the Commission pursuant to this provision shall remain confidential.

(d) Furnishing of summary to the evaluated judge. The Chief Justice shall in a manner consistent with the requirements of, furnish the judge evaluated a summary paragraph (a) of this section relating to respondent confidentiality of the judge's performance as determined by the evaluation process established by this rule.

(*Amended August 9, 1991, effective August 9, 1991; further amended and effective June 14, 1996.*)

19.6. Immunity.

All documents and information obtained by or submitted to the committee or to the Chief Justice and all results of judicial evaluations are absolutely privileged and no lawsuit predicated thereon may be brought. Members of the committee and staff shall be immune from suit and liability for any conduct in the course of their duties.

19.7. Effective date.

These rules shall take effect on January 1, 1991, and shall continue in effect until further order of the court. At the end of the first two years of operation of the program, the committee shall make appropriate recommendations to the court concerning any necessary modifications, amendments or alterations of the program.

(*Added November 27, 1990, effective January 1, 1991; amended August 9, 1991, effective August 9, 1991.*)

Rule 20. *PRO BONO PUBLICUS* ATTORNEY.

(a) Purpose. The purpose of this rule is to encourage attorneys who do not engage in the active practice of law to provide legal representation to members of our community who cannot afford private legal services.

(b) Waiver of active fees, dues and charges. Active fees, dues and charges required by Rule 17(d)(3) of the Rules of the Supreme Court of Hawai‘i are waived for any member acting exclusively as a pro bono publicus attorney under this rule. The pro bono publicus attorney is obligated to pay inactive fees, dues, and charges required by Rule 17(d)(8) of the Rules of the Supreme Court of Hawai‘i. Active fees paid before becoming a pro bono publicus attorney shall not be refunded.

(c) Definitions.

(1) A "pro bono publicus attorney" is an inactive member of the Hawai‘i State Bar who is not otherwise engaged in the practice of law and

(i) provides free civil legal services under the supervision of a qualified legal services provider as defined in this rule;

(ii) is a member in good standing of the Hawai‘i State Bar and has no record of discipline for professional misconduct imposed at any time within the past fifteen years and who did not resign or retire from the practice of law with disciplinary charges pending or in lieu of discipline; and

(iii) neither asks for nor receives personal compensation of any kind for the legal services rendered hereunder.

(2) A "qualified legal services provider" for the purposes of this rule is a not-for-profit legal services organization that receives or is eligible to receive funds from the Indigent Legal Assistance Fund and has an actively licensed Hawai‘i attorney who supervises pro bono publicus attorneys.

(d) Limitations.

(1) Except for the acts and services performed in association with a qualified legal services provider, a pro bono publicus attorney shall not otherwise engage in the practice of law.

(2) The pro bono publicus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the pro bono publicus attorney for actual expenses incurred while rendering services. The qualified legal services provider shall be entitled to receive any court-awarded attorney's fees for representation rendered by the pro bono publicus attorney. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by and through the qualified legal services agency.

(e) Duties of qualified legal services provider. A qualified legal services provider who engages the services of a pro bono publicus attorney shall file a sworn statement with the Hawai‘i State Bar that:

(1) Provides the name of the pro bono publicus attorney; and

(2) States that the pro bono publicus attorney will not be paid compensation, that the pro bono publicus attorney will be covered by the provider's malpractice insurance, agrees to notify the Hawai‘i State Bar, within ten days, when association with the pro bonopublicus attorney has ceased, states that the pro bono publicus attorney has read and is familiar with the Hawai‘i Rules of Professional Conduct, and states that the qualified legal services provider has verified that the pro bono publicus attorney has not been disciplined within the last fifteen (15) years in any jurisdiction.

(*Added June 27, 2002, effective July 1, 2002; amended October 16, 2007, effective December 1, 2007.*)

Rule 21. ACCESS TO JUSTICE COMMISSION.

(a) Creation. There shall be a commission to be known as the Hawai‘i Access to Justice Commission (the “Commission”).

(b) Purpose. The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together “low-income”) residents of Hawai‘i. To accomplish this, the Commission shall, along with such other actions as in its discretion it deems appropriate, endeavor to:

(1) Provide ongoing leadership and to oversee efforts to expand and improve delivery of high quality civil legal services to low-income people in Hawai‘i.

(2) Develop and implement initiatives designed to expand access to civil justice in Hawai‘i.

(3) Develop and publish a strategic, integrated plan for statewide delivery of civil legal services to low-income Hawai‘i residents.

(4) Increase and stabilize long-term public and private funding and resources for delivery of civil legal services to low-income Hawai‘i residents.

(5) Maximize the efficient use of available resources by facilitating efforts to improve collaboration and coordination among civil legal services providers.

(6) Increase pro bono contributions by Hawai‘i attorneys through such things as rule changes, recruitment campaigns, increased judicial involvement, and increased recognition for contributors.

(7) Reduce barriers to the civil justice system by developing resources to overcome language, cultural, and other barriers and by giving input on existing and proposed laws, court rules, regulations, procedures, and policies that may affect meaningful access to justice for low-income Hawai‘i residents.

(8) Encourage lawyers, judges, government officials, and other public and private leaders in Hawai‘i to take a leadership role in expanding access to civil justice.

(9) Educate governmental leaders and the public about the importance of equal access to justice and of the problems low-income people in Hawai‘i face in gaining access to the civil justice system through informational briefings, communication campaigns, statewide conferences (including an annual summit to report on and consider the progress of efforts to increase access to justice), testimony at hearings, and other means, and increase awareness of low-income people's legal rights and where they can go when legal assistance is needed.

(10) Increase effective utilization of paralegals and other non-lawyers in the delivery of civil legal services to low-income Hawai‘i residents.

(11) Increase support for self-represented litigants, such as through self-help centers at the courts.

(12) Develop initiatives designed to enhance recruitment and retention of attorneys who work for nonprofit civil legal services providers in Hawai‘i and to encourage law students to consider, when licensed, the practice of poverty law in Hawai‘i.

(13) Encourage the formation of a broad coalition of groups and individuals to address ways to alleviate poverty in Hawai‘i.

(14) Conduct a statewide assessment of unmet civil legal needs among low-income people in Hawai‘i five years after the Commission holds its first meeting to measure the progress being made to increase access to justice.

(c) Membership.

(1) NUMBER OF MEMBERS AND TERMS OF OFFICE. The Commission shall consist of 22 members, with staggered terms. The initial members (other than the chair and the four members appointed under subsection (3)(vii) below) shall draw their terms by lot so that five members shall serve a term ending on December 31 of the year of appointment, six shall serve a term ending on December 31 of the year following the year of appointment, and six shall serve a term ending on December 31 of the second year following the year of appointment. All subsequent appointments of such members (other than appointments to fill vacancies as described in subsection (2)) shall be for terms of three years or until his or her successor is appointed. Governmental representatives appointed under subsection (3)(vii) shall rotate by their terms of office or at the will of the appointing authority. Terms shall run on a calendar year basis, except that a member shall continue to serve until his or her successor is duly appointed.

(2) VACANCIES. A vacancy in the office of a member shall occur upon (i) the written resignation, death or permanent incapacity of such member, (ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member’s appointment to the Commission and that the appointing authority wishes to replace such member with a new appointee, or (iii) for such other cause as shall be specified in the bylaws, rules or written procedures of the Commission. Upon the occurrence of a vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(3) APPOINTMENT OF MEMBERS. Members of the Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall appoint five members to the Commission as follows: (A) the Chief Justice or a current or retired Associate Justice of the Supreme Court and (B) four other current or retired judges who the Chief Justice shall endeavor to appoint from different judicial circuits and to include at least one circuit court judge, one family court judge, and one district court judge.

(ii) The Hawai‘i State Bar Association (the "HSBA") shall appoint four members to the Commission as follows: (A) two representatives of the HSBA, who may be officers, directors or the Executive Director of the HSBA; and (B) two active HSBA members who have demonstrated a commitment to and familiarity with access to justice issues in Hawai‘i and who are not currently serving as an HSBA officer or director, one of whom shall be from a law firm of ten or more attorneys. At least one of the attorneys appointed by the HSBA shall be from an Island other than O‘ahu.

(iii) The Hawai‘i Consortium of Legal Services Providers (the "Consortium") shall appoint six members to the Commission as follows: (A) four representatives of Hawai‘i nonprofit civil legal services providers; and (B) in consultation with the Chief Justice of the Supreme Court, two non-attorney public representatives not directly associated with any such provider who have demonstrated a commitment to and familiarity with access to justice issues in Hawai‘i. The initial members of the Consortium shall be the American Civil Liberties Union Hawai‘i, Domestic Violence Action Center, Hawai‘i Disability Rights Center, Legal Aid Society of Hawai‘i, Mediation Center of the Pacific, Na Loio, Native Hawaiian Legal Corporation, University of Hawai‘i Elder Law Program of the Richardson School of Law, and Volunteer Legal Services Hawai‘i. Other civil legal services providers may be added to, and members may resign or be removed from, the Consortium as determined by the vote of a majority of the then members of the Consortium.

(iv) The Hawai‘i Justice Foundation (the "Foundation") shall appoint one member to the Commission, who shall be an officer, director or the Executive Director of the Foundation.

(v) The Dean of the University of Hawai‘i William S. Richardson School of Law shall appoint one member to the Commission, who may be the Dean.

(vi) The Hawai‘i Paralegal Association shall appoint one member to the Commission, who shall be a paralegal with a demonstrated interest in equal access to justice.

(vii) The Governor of Hawai‘i, the Attorney General of Hawai‘i, the President of the Hawai‘i Senate, and the Speaker of the Hawai‘i House of Representatives shall each be entitled to serve on the Commission or to appoint one member, provided that any appointee of the Governor shall be drawn from the Executive branch of government, any appointee of the Attorney General shall be a Deputy Attorney General, any appointee of the President of the Senate shall be a state Senator, and any appointee of the Speaker of the House shall be a state Representative.

(4) COMMUNITY WIDE REPRESENTATION. In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a Commission composed of members who are residents of different islands in Hawai‘i and who reflect the diverse ethnic, economic, urban, and rural communities that exist in the Hawaiian Islands.

(d) Officers. The Chief Justice of the Supreme Court shall designate from among the members of the Commission a chair and a vice chair of the Commission. The chair, who shall be the Chief Justice or the Chief Justice's designee, shall serve an initial term of one year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of two years, provided that such term shall expire at any earlier date on which the term of the vice chair as a member of the Commission shall expire or be terminated. The Commission shall select such other officers as it deems necessary and useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until his or her successor is duly designated or selected. Designations or selections to fill officer-vacancies shall be for the remainder of the term of the vacating officer.

(e) Bylaws, Rules and Procedures. The Commission may adopt bylaws, rules or operational procedures as it deems necessary for and consistent with Sections (c), (d) and (f) through (j) of this Rule.

(f) Committees and Task Forces. The Commission may create such committees and task forces, and appoint such committee and task force members, as it deems necessary or desirable to facilitate the work of the Commission. The Commission shall designate a chair of the committee or task force. The Commission may appoint to the committee or task force persons who are not members of the Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the Commission as the members of such cogmmittees and task forces deem appropriate. Meetings of committees and task forces shall be at the call of the chair or at the call of at least 20% of the members of the committee or task force. A quorum consisting of not less than one-third of the then-appointed and serving members of a committee or task force shall be necessary at a duly called meeting to adopt a recommendation to the Commission.

(g) Meetings, Quorum, and Voting. The Commission shall meet at least quarterly and shall have additional meetings at the call of either the chair or at least seven members upon at least ten days prior notice. A quorum consisting of not less than one-third of the members of the Commission then in office shall be necessary to transact business and make decisions at a meeting of the Commission. On any votes taken at a meeting of the Commission, the chair shall vote only in the event of a tie.

(h) Staff and Funding Support. It is anticipated that staff and funding support for the Commission will be provided by a combination of private and public sources of financial and in-kind support.

(i) Recommendations. Any recommendations by the Commission shall be made in the name of the Commission only, and not in the name of the individual members or the institutions or entities they represent.

(j) Reports and Review.

(1) ANNUAL REPORTS. The Commission shall file with the Supreme Court an annual report describing its activities during the prior 12-month period and deliver a copy of the report to the Executive Director of the HSBA.

(2) THREE-YEAR REVIEW. Three years after the Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the Commission toward the goal of substantially increasing access to justice in civil legal matters for low-income Hawai‘i residents.

(Added April 24, 2008, effective May 1, 2008; further amended December 11, 2015, effective December 11, 2015.)

Rule 22. MANDATORY CONTINUING LEGAL EDUCATION.

(a) Mandatory Continuing Legal Education. Except as otherwise provided herein, every active member of the Bar shall complete at least 3 credit hours of approved continuing legal education (CLE) during each annual reporting period. “Continuing legal education,” or “CLE,” is any legal educational activity or program that is designed to maintain or improve the professional competency of lawyers or to expand an appreciation and understanding of the ethical and professional responsibility of lawyers and is approved for credit by the Hawai`i State Bar, including those listed in Rule 22(b) of these Rules.

(b) Ethics and Professional Responsibility Minimum. At least once every 3 years every active member shall complete 1 hour of approved ethics or professional responsibility education. This credit hour shall count toward the annual CLE requirement. “Ethics or professional responsibility education” means those courses or segments of courses devoted to:

(1) the Rules of Professional Conduct;

(2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers;

(3) substance abuse and its effects on lawyers and the practice of law; or

(4) client trust administration, bias awareness and prevention, and access to justice.

(c) Carry Forward of Credit Hours. A member may carry forward from the previous reporting period a maximum of 3 excess CLE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) Mandatory Certification, Reporting, and Record Keeping. Each active Bar member shall certify on the annual registration form whether the member is in compliance with this Rule by reporting the number of approved credit hours of Continuing Legal Education completed in the previous year, including the specific number of hours of ethics or professional responsibility education, and shall maintain certification records for the three most recent reporting periods. These records shall be subject to audit by the Hawai`i State Bar. Non-cooperation with an audit shall be deemed noncompliance with this Rule.

(e) Courses and Activities. The requirements of this Rule may be met, subject to prior approval as set out in sections (f) and (g) of this Rule, by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, and the like;

(2) preparing for and teaching approved professional education or judicial education courses or activities. Two hours of preparation time may be certified or reported for each 50 minutes of time spent teaching, i.e. 3 hours may be claimed for teaching a 50 minute course;

(3) completing approved professional education courses or activities; and

(4) writing scholarly legal articles that comply with Regulation 3 of the Continuing Legal Education Regulations of the State Board of Continuing Legal Education and are published in a bar journal, law review, book, bar association or similarly recognized journal, or other legal publication may qualify for 2 credit hours per 1500 published words per year.

(f) Approved Courses or Activities. Courses and activities sponsored by the Hawai‘i State Bar, the American Bar Association, or the National Organization of Bar Counsel qualify for CLE credit under this Rule.

(g) Approval and Accreditation Authorization. The Hawai‘i State Bar is authorized to approve or disapprove:

(1) other educational courses and activities for CLE credit and

(2) applications by an entity for accreditation as a course or activity provider. Approved courses and activities may include, but are not limited to, courses and activities conducted in-house or sponsored by Inns of Court, bar sections or other professional legal organizations. Accreditation shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Hawai‘i State Bar. The Hawai‘i State Bar shall establish the procedures, minimum standards, and fees for approval of specific courses and activities or accreditation of providers and for revocation of such approval or accreditation.

(h) Full-time Judges. Federal judges, magistrate judges, bankruptcy judges, U.S. Court of Federal Claims judges and administrative law judges are exempt from the requirements of this Rule. Full-time state judges shall participate for at least 3 hours each year in a program of judicial education approved by the Committee on Judicial Education. Full-time state judges who are unable to attend, in person, a program approved by the Committee on Judicial Education or who are excused from that program shall comply with this requirement by such other means as the supreme court approves. Full-time state judges shall report the number of approved judicial education hours attended on the judges' annual financial disclosure form.

(i) Inactive members. Inactive members of the Bar who subsequently elect active status shall complete and report 3 hours of approved CLE, including 1 hour of approved ethics or professional responsibility education, within 3 months of electing active status. These CLE hours shall fulfill the requirements of Rule 22(a). CLE credits completed during the year prior to the reporting year, or in the reporting year, although completed while on inactive status, may be credited toward completing this requirement.

(j) Newly licensed members. Each person licensed to practice law who elects active status in the year in which he or she is licensed shall not be required to comply with the required 3 CLE hours mandated by section (a) of this Rule for that year. Nothing herein, however, shall modify the obligations imposed by Rule 1.14 of these rules, that requires completion of a specific Hawai‘i Professionalism course, distinct from general CLE courses, sponsored jointly by the Hawai‘i State Bar and the Supreme Court and offered only bi-annually. Failure to complete the Hawai‘i Professionalism course in a timely manner will result in automatic administrative suspension. *See* Rule 1.14(c) of these Rules.

(k) Good Cause Exemption or Modification. An active member may apply to the Hawai'i State Bar for good cause exemption or modification from the CLE requirement. Members seeking an exemption or modification shall furnish substantiation to support their application as requested by the Hawai'i State Bar. Good cause shall exist when a member is unable to comply with the CLE requirement because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that are not willful and are beyond the member's control.

COMMENT:

Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. Continuing legal education is valuable to lawyers and attendance at courses beyond the amount required by this Rule is encouraged. The new requirements of continuing legal education are expected to result in the improvement of the profession and an enhancement of lawyer services to clients.

The state and federal judicial systems sponsor programs of judicial education for federal and state judges and, accordingly, full-time state and federal judges are excluded from the provisions applicable to active members of the Bar.

Rules 17, 22, and other Rules of the Supreme Court of the State of Hawai'i (RSCH) refer to the Bar, the Hawai'i State Bar, the Bar Administrator, the Hawai'i State Bar Association, and the Executive Director of the Bar. References to the Bar or the Hawai'i State Bar are to the unified Bar established by the Hawai'i Supreme Court upon adoption of RSCH Rule 17. Historically, the unorganized bar consisted of all attorneys admitted to the practice of law in the State of Hawai'i, and the Hawai'i State Bar Association was a voluntary organization. In 1989, the supreme court "unified" the bar by requiring all members of the bar to be part of "an organization to be known as the Hawai'i State Bar." RSCH Rule 17 also defined the unified Bar organizational structure. The supreme court ordered the Committee on Integration of the Bar to seek nominations for the "initial officers and Board of Directors of the Hawai'i State Bar." See UNIFICATION OF THE HAWAI'I STATE BAR IMPLEMENTATION ORDER NO. 1. *Subsequently, the Hawai'i State Bar Association amended its rules and bylaws to conform to RSCH Rule 17 "to permit [the Association] to become the administrative body of the unified bar of this State . . . if this Court should appoint it to such capacity[.]" See* UNIFICATION OF THE HAWAI'I STATE BAR IMPLEMENTATION ORDER NO. 2. *The supreme court appointed the Hawai'i State Bar Association "as the administrative entity of the Hawai'i State Bar, to carry out the purposes and to have the powers set forth in Rule 17(b) . . . and other rules of this court, according to the terms of said rules." Id. Implementation Order Number 2 rescinded Implementation Order Number 1's search for candidates. The Hawai'i State Bar Association assumed its role as administrator of the Hawai'i State Bar. By operation of Implementation Order No. 2, the Hawai'i State Bar Association is the Bar Administrator. Consequently, the Executive Director of the Hawai'i State Bar Association is the Executive Director referred to by the rules for as long as the Hawai'i State Bar Association remains the Bar Administrator.*

(Added July 15, 2009, effective January 1, 2010; further amended April 29, 2010, effective July 1, 2010; further amended May 8, 2012, effective July 1, 2012; further amended November 12, 2014, effective January 1, 2015.)