

CLERK OF THE SUPREME COURT
STATE OF HAWAII

2009 FEB -2 AM 10:50

FILED

In the Matter of the Publication
of the

Rules of the Disciplinary Board of the Hawai'i Supreme Court

ORDER AUTHORIZING PUBLICATION OF THE RULES OF THE
DISCIPLINARY BOARD OF THE HAWAII SUPREME COURT

(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJ., and
Intermediate Court of Appeals Chief Judge Recktenwald,
assigned by reason of vacancy)

Upon review of the Rules of the Disciplinary Board of
the Hawai'i Supreme Court, that were published by our orders
dated January 12, 2009 and January 22, 2009 and adopted in
accordance with Rule 2.4(e)(6) of the Rules of the Supreme Court
of the State of Hawai'i, it appears there was a typographical
error on page RDB--9. Therefore,

IT IS HEREBY ORDERED that page RDB--9, attached hereto,
shall be published and substituted in Exhibit A-2 to the Rules of
the Supreme Court of the State of Hawai'i, in lieu of the page
RDB--9 that was attached to our January 12, 2009 and January 22,
2009 orders, effective nunc pro tunc, July 1, 2008.

DATED: Honolulu, Hawai'i, February 2, 2009.

Paula A. Nakayama

James E. Duffy Jr.

Mark E. Recktenwald

Clerk and served upon the Hearing Officer or Hearing Committee.

Rule 23. Hearing Officer's or Hearing Committee's Report to the Board.

(a) Report; Contents; Due Date. The Hearing Officer's or Hearing Committee's report shall include:

- (i) Findings of fact;
- (ii) Conclusions of law;
- (iii) Each ethical rule violated and constituting grounds for discipline;
- (iv) Any aggravating and mitigating circumstances; and
- (v) Recommended disposition.

The report must be submitted to the Board within 30 days following the Conclusion of the Hearing and shall be accompanied by the Record of Formal Disciplinary Proceeding. Upon receipt of the report, the Board Chairperson shall schedule the matter for the next available Board meeting.

(b) Service of the Report; Notice. The Filing Clerk shall serve a copy of the report upon Counsel and the Respondent in accordance with RSCH 2.11(b). Counsel shall notify the Complainant that a report has been filed with the Board; however, no copy of the report shall be provided to the Complainant.

(c) Requests for Briefing or Oral Arguments. Either Party may request permission to submit briefs or to present oral argument to the Board. Such a request must be made in writing to the Board Chairperson within ten days after service of the Hearing Officer's or Hearing Committee's report in accordance with RSCH 2.7(d).

(d) Failure to Observe Deadlines. If a report is not submitted timely, Counsel shall immediately notify the Board Chairperson, who shall take appropriate action, including but not limited to the following:

- (i) Set a final deadline for the Hearing Officer or the Hearing Committee to comply;
- (ii) Reassign the responsibility to prepare the Hearing Committee's report to another member of the Hearing Committee;

(iii) Appoint a substitute Hearing Officer or substitute Hearing Committee members and remand the case for further proceedings as appropriate; or

(iv) Take such other action deemed necessary to procure the timely submission of the Hearing Officer's or Hearing Committee's report.

VI. BOARD REVIEW AND DISCIPLINARY SANCTIONS

Rule 24. Board Disposition of Formal Disciplinary Proceeding.

(a) Briefs; Oral Argument. If briefs or oral arguments are requested by the Board or any Party, the Chairperson shall issue an order setting forth the dates by which briefs are due and oral argument is scheduled. The Filing Clerk shall notify the Parties of the order.

(i) If no briefs are submitted or no oral argument is requested, then the Board Chairperson shall issue an order setting the deliberation date. The Filing Clerk shall notify the Parties of the order.

(ii) If neither Party timely requests submission of briefs or oral argument, the Board may order submission of briefs or oral argument by a majority vote pursuant to RSCH 2.7(d).

(iii) Oral arguments shall be recorded and preserved in writing, on tape, or by the use of such other device as appropriate. Oral arguments shall be transcribed, and the original of each transcript shall be filed as part of the Record of Formal Disciplinary Proceeding.

(iv) The Board Chairperson may set time limits for oral arguments.

(b) Closed Deliberations. Only Board members shall be present during the deliberations.

(c) Review Standards.

(i) **FINDINGS OF FACT.** Findings of fact, including circumstances in mitigation and circumstances in aggravation, are subject to the "clearly erroneous" standard of review.

(ii) **CONCLUSIONS OF LAW.** Conclusions of law are subject to the "right/wrong" standard of review.

(iii) **MIXED FINDINGS OF FACT AND CONCLUSIONS OF LAW.** Mixed findings of fact and conclusions of law are subject to the "clearly erroneous" standard of review.