

HAWAI‘I SUPREME COURT COMMISSION ON PROFESSIONALISM

THIRD REPORT TO THE HAWAI‘I SUPREME COURT

Submitted By:

The Honorable James E. Duffy, Jr., Chair

Susan Arnett

The Honorable Joseph Cardoza

Steven Dixon

Lyn Flanigan

The Honorable Daniel Foley

David W. Hall

Grace Kido

Gayle Lau

The Honorable Steven Levinson

The Honorable Susan Oki Mollway

Michael Nauyokas

Nathan Nikaido

Terence O'Toole

Wesley Park

Judith Ann Pavey

The Honorable Karen Radius

Jill Ramsfield

Carole Richelieu

The Honorable Trudy Senda

Kevin Takata

The Honorable Terence Yoshioka

Calvin Young

June 13, 2008

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

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June 13, 2008

I. ESTABLISHMENT OF THE COMMISSION ON PROFESSIONALISM

The Commission on Professionalism ("Commission") was established on March 14, 2005 by an Order of the Hawai'i Supreme Court signed by Chief Justice Ronald T. Y. Moon (Appendix "A"). Establishment of the Commission was recommended by the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism.

II. THE COMMISSION'S CHARGE

The Order establishing the Commission set forth its charge:

The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

- (a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;
- (b) identify barriers to implementation;
- (c) identify action steps to overcome barriers; and
- (d) propose a post-implementation evaluation process.

III. MEMBERS OF THE COMMISSION

The Members of the Commission consist of judges, practicing lawyers, law school faculty, representatives of entities regulating attorneys, and non-lawyer public members. Biographical information of the present Members is provided in Appendix "B".

IV. COMMISSION MEETINGS

The Minutes of the Commission meetings on October 12, 2007, February 15, 2008, and May 2, 2008 are presented in Appendix "C".

V. STATUS REPORT ON PENDING PROJECTS REQUESTED BY THE HAWAII SUPREME COURT

A. Recommendation re Adoption of ABA Model Insurance Disclosure Rule

In the Commission's Second Report to the Hawai'i Supreme Court, the Commission recommended that the Supreme Court revise RSCH 17(d)(1) to require that attorneys disclose on their attorney registration statement whether they have professional liability insurance. The goal of this request was to determine how many of the HSBA members in private practice are presently uninsured, identify the potential reasons for lack of insurance (prohibitive costs, lack of competitive insurers, etc.), and determine potential solutions (which could include an HSBA sponsored insurance program similar to the Oregon model).

The Supreme Court accepted the Commission's recommendation, and an Order Amending Rule 17(d) of the Rules of the Supreme Court was filed on October 10, 2007 requiring that HSBA members in active private practice disclose on their attorney registration statements whether they have professional liability insurance. See Appendix "D".

Lyn Flanigan and her HSBA staff compiled and evaluated the insurance disclosure information. See appendix "E". As indicated in the HSBA report, there was some confusion in answering the disclosure question as posed, and as a result, the report numbers are not precise. While not precise, Ms. Flanigan expressed confidence that the following conclusions drawn from the survey are relatively accurate:

(1) approximately 74% of active private members are insured, and (2) approximately 55% of the solo practitioners maintain liability insurance.

With the survey information having been gathered, Justice Duffy referred this matter back to the Commission's Committee on Insurance Disclosure (co-chaired by Terry O'Toole and Wesley Park) for its recommendation whether (1) the Rules of Professional Conduct should be revised to require attorneys to disclose in writing to their clients/potential clients if they do not have professional liability insurance and/or (2) clients/potential clients have internet access to an attorney's disclosure on their registration statement regarding whether they have professional liability insurance.

B. Creation of a Mandatory Refresher Course on Professionalism and Ethics

The Committee re Mandatory Continuing Legal Education met throughout the year to discuss creation and content of a course on Professionalism and Ethics. There was consensus that the course should be presented by internet access for logistical and cost-effective reasons. The HSBA made available on its website approximately 50 online ethics courses provided by other bars for review and generation of topics and ideas (see Appendix "F"). It was noted by the Office of Disciplinary Counsel that any proposed course offered in Hawai'i must include

substantive content accurately reflecting local practice and the Hawai'i Rules of Professional Conduct, as jurisdictions differ.

Commission members expressed some concerns about the mandatory nature of the Professionalism and Ethics course in view of (1) the demands presently being made upon lawyers to do additional pro bono work; (2) the pressure to survive economically; and (3) the cost and time commitment of any required CLE program.

Justice Duffy acknowledged the concerns expressed, but stated that, in his opinion, it is in the Commission's best interest to come up with a reasonable, workable, and cost-effective course on Professionalism and Ethics for the following reasons: (1) the Supreme Court is committed to requiring such a course, and is looking to the Commission for a reasonable, workable, and cost-effective proposal for the court to consider; (2) lawyers in Hawai'i are privileged to be self-regulated, unlike medical doctors, certified public accountants, realtors, and others, who are government-regulated and subject to continuing education requirements. There appears to be increasing interest in the legislature to regulate lawyers and our vulnerability is increased by the lack of any continuing education requirement, and (3) HSBA President Jeff Sia's editorial in the February 2008 Hawaii Bar Journal "Mandatory CLE - has its time come" has highlighted our status as one of ten jurisdictions in the United States without a mandatory CLE requirement.

In view of the foregoing, Justice Duffy requested that Calvin Young's committee (also co-chaired by Judge Dan Foley and Professor Jill Ramsfield) come up with a reasonable, workable, and cost-effective course plan for a Professionalism and

Ethics course for the Supreme Court to consider by the time of our next Commission meeting in October 2008.

C. Presentation (1) at a Judicial Education Conference re What Judges Can do to Encourage Professionalism in Their Courts and (2) to HSBA Members re Professionalism and What Judges Expect of Attorneys Appearing in Their Courts

Chair Judge Trudy Senda is working with Judge Joseph Cardoza and Judge Karen Radius to prepare such a presentation. Judge Senda further reported that (1) the Judiciary Education Committee needs to approve such a presentation; (2) if approved, the earliest presentation date would be at the Spring 2009 Judicial Education Conference; and (3) the approach of the presentation will not be "lawyer-bashing," but will be intended to elevate the performance of the judges as well as lawyers. Assuming the presentation to the judges goes forward, Judge Senda will work with the HSBA staff on a similar program for the HSBA.

D. Creation of a Question for Inclusion on the HSBA's Annual Registration Statement Inquiring as to What CLE Programs the Attorney Would Like to See Offered

The HSBA Strategic Planning Committee has developed an electronic CLE survey which was distributed to active members in June 2008.

E. Recommendation Whether "Of Counsel" Relationships Should Be Defined in the Rules of the Supreme Court of Hawai'i or the Hawai'i Rules of Professional Conduct

The Disciplinary Board Formal Opinion No. 43 addresses the use of the title "of counsel." See Appendix "G". While there does not appear to be any present significant problem with the representation of "of counsel" relationships in Hawai'i, in view of the Supreme Court's request for a recommendation whether such a relationship should be defined in the Rules of the Supreme Court or the Hawai'i Rules of

Professional Conduct, Carole Richelieu of the ODC and HSBA representatives Jacqueline Earle and Crystal Rose drafted a proposed revised Formal Opinion No. 43 re “of counsel” relationships. See Appendix-“H”.- The Commission agreed to support the proposed revised Formal Opinion No. 43.

In view of the foregoing, the Commission does not presently recommend that “of counsel” relationships be defined in the Rules of the Supreme Court of Hawai‘i or the Hawai‘i Rules of Professional Conduct.

VI. STATUS REPORT RE ADDITIONAL PROJECTS SUGGESTED BY COMMISSION MEMBERS

A. American Bar Association Recommendation Adopted by the House of Delegates August 13-14, 2007 re Plan for Law Practice Contingencies in Event of Death, Disability, Disappearance, Disbarment, etc.

Carole Richelieu requested that the Commission consider the above-described American Bar Association (ABA) recommendation. See Appendix “I”. The basis for her request is that the lack of a contingency plan has resulted in the ODC office handling 11 trusteeships at present, and that this number is anticipated to increase as “baby boomer” bar members are aging. Approximately 29 states presently have either a bar program or court rule which addresses this issue.

This matter was referred to the HSBA for evaluation and comment. The HSBA responded as follows (see Appendix “J”):

Inventory Attorney Requirement: Although the wisdom and practicality of designating an “inventory attorney” to take over another attorney’s records and files in the event the attorney is incapacitated or dies is appreciated, the HSBA noted that there were numerous issues involved with such a requirement that may have not been fully considered. These other issues include, but are not limited to, any disclosure requirements to existing clients of the “inventory attorney;” potential liability exposure of the “inventory attorney;” and the ODC’s role and activity when an attorney

becomes incapacitated or dies. While it may be advisable and prudent for an attorney to designate an "inventory attorney," the HSBA prefers and recommends the promotion of educational programs for the solo attorney practitioners relating to office management and succession issues. Therefore, the HSBA does not recommend the adoption of a rule requiring designation of an "inventory attorney."

Based upon the rationale set forth by the HSBA, the Commission agreed not to recommend the adoption of a rule requiring designation of an inventory attorney.

B. Formation of New Committee to Review Possible Need to Revise Hawai'i Rules of Professional Conduct re *Pro Se* Litigants and "Unbundling of Legal Services" Issue

Judge Joseph Cardoza recommended that the Commission establish a committee to review the possible need to revise the Hawai'i Rules of Professional Conduct re *Pro Se* Litigants and "Unbundling of Legal Services" issue. The basis for Judge Cardoza's request is that he (together with Judge Barbara Richardson and Judge Jennifer Ching) recently attended a mainland conference regarding *pro se* litigants, which discussed the issue of whether our Rules of Professional Conduct need to be revised to make it clear that attorneys can provide representation to clients on a limited basis. Judge Cardoza further related several instances in his court where opposing attorneys have objected to the presence of attorneys who are participating as counsel on a limited basis. While Judge Cardoza is aware that a prior study of this issue some time ago may have concluded that a rule revision was not necessary to accommodate limited basis representation, based upon his personal experience, the rule may need to be revised as the practical problems continue.

The Commission accepted Judge Cardoza's recommendation, and the above-described committee has been established, with Judge Cardoza as its chair.

C. Review and Revival of HSBA Minor Misconduct Program

Steve Dixon, Director of Attorneys and Judges Assistance Program (AAP), reported that he has received several referrals from ODC for mentoring of lawyers accused of minor misconduct not warranting formal ODC disciplinary proceedings, and which have not involved drug or alcohol-related dependency problems. While Steve is willing to assist, he expressed his concern that HSBA members also be involved as mentors. Lyn Flanigan reported that she, Steve, and ODC Deputy Chief Disciplinary Counsel Charles Hite have temporarily reinstated the program with the help of volunteer HSBA mentors and are working together to revise the present procedural guidelines in the HSBA Minor Misconduct Program; they hope to get the program back up and running shortly.

VII. COMPLETED COMMISSION PROJECTS IN 2007-2008

A. Order Amending Rule 2.24 of the Rules of the Supreme Court of Hawai'i

The Commission previously recommended to the Supreme Court that RSCH 2.24 ["Audit of Trust Accounts"] be revised to shift the cost of an audit of an attorney's trust account to the attorney audited. The Supreme Court agreed with the Commission's recommendation, and an Order Amending Rule 2.24 was entered on October 2, 2007. A subsequent Order Amending Rule 2.24 was entered by the Supreme Court on October 4, 2007 which corrected the effective date of the Order Amending Rule 2.24. See Appendix "K".

B. Order Amending Rule 17(d) of the Rules of the Supreme Court of the State of Hawai'i

The Commission previously recommended that the Supreme Court revise RSCH 17(d)(1) to require that attorneys disclose on their attorney registration statement

whether they have professional liability insurance. As discussed earlier herein, this information is for data gathering purposes only. See section V.A. of this Report. The Supreme Court agreed with the Commission's recommendation, and an Order Amending Rule 17(d) of the Rules of the Supreme Court of the State of Hawai'i was entered on October 10, 2007. See Appendix "D".


C. Revision of ODC Board Formal Opinion No. 43 re "Of Counsel" Relationships

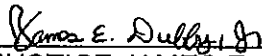
See section V.E. of this Report.

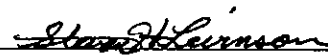
D. Recommendation Not to Recommend a Rule Requiring Designation of an "Inventory Attorney"


See section VI.A. of this Report.


Respectfully submitted this 13th day of June, 2008.



JUDGE DANIEL R. FOLEY
Co-Chair, Continuing Legal
Education Committee


JUSTICE JAMES E. DUFFY, JR.
Chair, Commission on
Professionalism
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs


JUSTICE STEVEN H. LEVINSON
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs


CALVIN E. YOUNG
Co-Chair, Continuing Legal
Education Committee


TERENCE J. O'TOOLE
Co-Chair, Committee
on Insurance Disclosure


WESLEY PARK
Co-Chair, Committee
on Insurance Disclosure

Appendix

“A”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Establishment of
HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM

CLERK OF THE SUPREME COURT
STATE OF HAWAI'I

2005 MAR 14 PM 1:22

FILED

ORDER ESTABLISHING THE HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM
(By: Moon, C.J., for the court¹)

WHEREAS, in August 1996, the Conference of Chief Justices (CCJ) passed a resolution calling for a national study and action plan regarding lawyer conduct and professionalism, wherein the CCJ noted a significant decline in professionalism in the bar and a consequent drop in the public's confidence in the profession and the justice system in general and concluded that a strong coordinated effort by state supreme courts to enhance their oversight of the profession was needed; and

WHEREAS, in March 1999, the CCJ's January 1999 *National Action Plan on Lawyer Conduct and Professionalism* was published and disseminated to chief justices, lawyer disciplinary agencies, and state bar associations throughout the United States; and

WHEREAS, the National Action Plan sets forth programs, initiatives, and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession; and

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

WHEREAS, on August 2, 2001, the CCJ adopted the strategies for implementing the National Action Plan formulated by the American Bar Association in its report, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*; and

WHEREAS, the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism (National Action Plan Committee), charged with the task of reviewing the National Action Plan and making recommendations to the supreme court, issued its final report on May 24, 2004.

NOW, THEREFORE, upon the recommendation of the National Action Plan Committee,

IT IS HEREBY ORDERED that:

(1) The Hawai'i Supreme Court's Commission on Professionalism is hereby established.

(2) The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

(a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;

(b) identify barriers to implementation;

- (c) identify action steps to overcome barriers;
and
- (d) propose a post-implementation evaluation
process.

(3) The Chair of the Commission shall be the Chief Justice or the Chief Justice's designee. Commission members shall be appointed by the chief justice, upon the concurrence of a majority of the justices of the supreme court. In addition to the Chair, the Commission shall be comprised of a total of nineteen (19) members that reflect racial, ethnic, gender, and geographic diversity and as prescribed below:

(a) Judges.

- (i) Four (4) incumbent Hawai'i trial court judges chosen from the First, Second, Third, and/or Fifth Judicial Circuits;
- (ii) Two (2) incumbent judges chosen from the Hawai'i Supreme Court or the Intermediate Court of Appeals or both;
and
- (iii) One (1) incumbent judge chosen from the United States District Court for the District of Hawai'i or the United States Court of Appeals for the Ninth Circuit.

(b) Practicing Lawyers. Four (4) practicing lawyers who are members of the Hawai'i State Bar Association, chosen from a list of ten

(10) nominees recommended by the Board of Directors of the Hawai'i State Bar Association.

- (c) Law School Faculty. One (1) law school faculty member who is a full-time faculty member from the University of Hawai'i Richardson School of Law, chosen from a list of three (3) nominees recommended by the dean of the law school.
- (d) Attorney Regulatory Entities. One representative each from (i) the Disciplinary Board of the Hawai'i Supreme Court, (ii) the Lawyers' Fund for Client Protection, (iii) the Attorneys and Judges Assistance Program, and (iv) the Board of Bar Examiners, chosen from a list of three (3) nominees recommended by the board and/or trustees of each respective entity.
- (e) Public Members. Three (3) non-lawyer citizens active in public affairs.

(4) With the exception of the Chair of the Commission, the members of the Commission shall serve for a term of four (4) years provided, however, in the discretion of the chief justice, the initial appointments may be for a term of less than four (4) years so as to accomplish staggered terms for the membership of

the Commission. A Commissioner may be appointed for additional terms.

(5) A Commissioner who no longer meets the qualifications of this rule shall be deemed to have completed the Commissioner's term and the Commissioner's office shall be deemed vacant. Any vacancy on the Commission shall be filled by the chief justice, upon the concurrence of a majority of the justices of the supreme court, for the unexpired term.

(6) The Commission shall serve in an advisory capacity only, shall give continuing consideration to the enhancement of professionalism in the practice of law, and shall make reports and/or recommendations to the supreme court, annually, regarding implementation of the National Action Plan and any other relevant information regarding the work of the Commission.

(7) Commission members shall not receive compensation for their services, but may be reimbursed for travel and other expenses that are incidental to the performance of their duties.

(8) The Commission shall have no authority to impose discipline upon any members of the Hawai'i State Bar or to amend, suspend, or modify the Hawai'i Rules of Professional Conduct (HRPC). The Commission, however, may, if appropriate, recommend amendments to the HRPC to the supreme court for consideration.

IT IS FURTHER ORDERED, pursuant to the foregoing, that the following individuals are appointed as members of the Commission on Professionalism, effective immediately upon the filing of this order and for the term as specified below:

For a term expiring on March 13, 2007.

Hon. Karen Radius, First Judicial Circuit
Hon. Terence Yoshioka, Third Judicial Circuit
Hon. Daniel Foley, Appellate Court
Hon. Susan Oki Mollway, Federal Court
Susan Arnett, HSBA
Terence O'Toole, HSBA
Carol Muranaka, Lawyers Fund for Client Protection
Steven Dixon, Attorneys & Judges Assistance Program
Wesley Park, Public member


For a term expiring on March 13, 2009

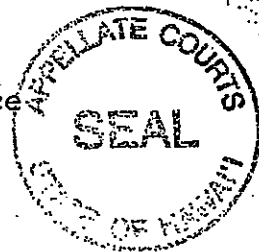
Hon. Joseph Cardoza, Second Judicial Circuit
Hon. Trudy Senda, Fifth Judicial Circuit
Hon. Steven Levinson, Appellate Court
Calvin Young, HSBA
Michael Nauyokas, HSBA
Carol Mon Lee, Richardson School of Law
Carole Richelieu, ODC
Grace Nihei Kido, Board of Bar Examiners
Petra Bray, Public member
Nathan Nikaido, Public member

IT IS FINALLY ORDERED that the HONORABLE JAMES E. DUFFY, JR., is appointed as the Chief Justice's designee and shall serve as Chair of the Commission:

DATED: Honolulu, Hawai'i, March 14, 2005.

FOR THE COURT:


Chief Justice



Appendix

“B”

MEMBERS OF THE COMMISSION ON PROFESSIONALISM

SUSAN ARNETT, ESQ. is a graduate of Kalani High School (1969), the University of Hawaii (1974) and the Catholic University of America Law School (1977). After working at the Legal Aid Society of Hawaii and five years of private practice, she joined the State Public Defender's Office in 1985. As a senior trial attorney in that office, she has done approximately 75 felony jury trials, including murder and class "A" felonies. She served as the supervisor of the Maui office from 1997 to 2001 and is now a Felony Trial Supervisor in the Honolulu office. She has supervised the planning and presentation of the annual week-long statewide Public Defender Advocacy Skills Training Program for the past 15 years. She also serves on the faculty of the Institute for Criminal Defense Advocacy program at California Western Law School. She is an adjunct professor at the William S. Richardson School of Law with the Hawai'i Innocence Project. She serves on the Hawaii Supreme Court Committee on Judicial Performance. She has served as a volunteer with the Hawaii Opera Theatre since 2002.

JUDGE JOSEPH CARDOZA is a judge of the Second Judicial Circuit Court, State of Hawai'i, and a current Vice President, Hawai'i State Trial Judge Association. He spent approximately a decade in private practice and a decade in government practice before becoming a judge. Judge Cardoza serves or has served as a continuing legal education instructor and as a volunteer with a variety of community organizations.

STEVEN B. DIXON, ESQ., a 1975 graduate of the University of Hawai'i at Hilo, has practiced law in small to medium sized law partnerships, and as a solo practitioner, on the Big Island since 1978. His areas of practice included real estate, business, tax and estate planning. He has also served as Principal Broker for Kohala Ranch, and the oldest and largest vacation ownership developer in the world, Fairfield Resorts, Inc. In December 2005, he succeeded retiring Director Peter Donahoe as Director of the Hawai'i Supreme Court Attorneys and Judges Assistance Program. He serves as a volunteer on the Hawai'i Medical Association Physician's Health Committee. An avid sailor, and author of Hawai'i sailing stories "The Hawaiian Voyages of the Ono Jimmy", he has served as Commodore of the Kona Sailing Club and is a member of the Hawai'i Yacht Club. He sailed to O'ahu and now lives on his CSY '44 cutter rigged sailing vessel in the Ala Wai Harbor.

ASSOCIATE JUSTICE JAMES E. DUFFY, JR. is an Associate Justice of the Hawai'i Supreme Court. Justice Duffy was a founding member of the firm Fujiyama, Duffy & Fujiyama, a practicing trial lawyer (representing both plaintiffs and defendants), mediator, arbitrator, and special master. Justice Duffy is a past President of the Hawai'i State Bar Association, and is a member of the American College of Trial Lawyers, the American Board of Trial Advocates, and the American Inn of Court.

LYN FLANIGAN, ESQ. After obtaining her M.A. in Asian Studies, Lyn worked in international education at the East West Center. She obtained her J.D. from the William S. Richardson School of Law (University of Hawaii) and clerked for both the U.S. Bankruptcy Court and the U.S. District Court in Hawaii. Lyn then moved to private practice in the areas of bankruptcy and workouts with Goodsill Anderson Quinn & Stifel in Honolulu. Lyn subsequently served for seven years as Senior Counsel/Corporate-Investments for the Kamehameha Schools/Bishop Estate Trust, after which she served for over five years as General Counsel and Corporate Secretary of Hawaiian Airlines. She joined the HSBA as Executive Director in September 2003. Lyn is active in community organizations in Honolulu, having served on the East West Center Board of Governors and the Manoa Dog Coalition, and is currently serving on the East West Center Alumni Board, the East West Center Foundation Board, the Board of the Red Cross of Hawaii, the Board of the YWCA of Oahu, and the Friends of the WSR Law School. Lyn spends her free time hiking with her two chocolate labs, is an aspiring yogi, swims frequently and enjoys travel, reading and movies.

ASSOCIATE JUDGE DANIEL R. FOLEY has been an Associate Judge at the Intermediate Court of Appeals, State of Hawai'i, since October 2000. He received his B.A. in 1969 and his J.D. in 1974 from the University of San Francisco. Prior to his appointment as a judge, he was a partner for eleven years in the law firm of Partington & Foley where he handled federal and state civil rights cases. He also was an Adjunct Professor of Civil Rights at the William S. Richardson School of Law. From 1984 to 1987 Judge Foley was legal director of the American Civil Liberties Union of Hawai'i, and from 1975 to 1983 he was counsel to various Micronesian governmental bodies, constitutional conventions, and organizations.

DAVID W. HALL, ESQ. has been a solo practitioner since 1993 in areas including criminal defense, civil litigation and juvenile law. He received a B.A. in political science from Yale University in 1961, served in the Naval Reserve on active duty from 1961-1966 and received his J.D. from the George Washington University's National Law Center in 1971. He served as a Hawaii deputy public defender in 1971 and has been in private practice since 1971. He served on the Act 59 Task Force 2004-5 and has served as a CAAP Arbitrator since 1986 and on the Hawaii Supreme Court's Standing Committee on the Rules of Evidence since 1990.

GRACE NIHEI KIDO, ESQ. is a partner in the Finance and Real Estate Department of Cades Schutte, LLP. She is also the Chairperson of the firm's Recruiting Committee and a member of the Summer Program Committee. Ms. Kido obtained her B.A. with distinction from the University of Hawai'i in 1977, and her law degree from the University of Hawai'i William S. Richardson School of Law in 1985, following a five-year

career in Human Resources Management in the hotel industry. While at the University of Hawai'i earning her law degree, Ms. Kido was the casenotes editor and a member of Law Review and was a finalist in the school's Moot Court competition. Ms. Kido has been a member of the Board of Examiners of the Hawai'i Supreme Court since 1994; is the current Treasurer and has been on the Board of Directors of the Real Property and Financial Services Section of the Hawai'i State Bar Association since 2000; is a Fellow of the American College of Mortgage Attorneys; and is a former director of the William S. Richardson School of Law Alumni Association and of the Young Lawyer's Division of the Hawai'i State Bar.

GAYLE J. LAU, ESQ. presently serves as Regulatory Officer with the Hawaii Credit Union League. He previously served as Assistant United States Trustee with the U.S. Department of Justice, overseeing the administration of bankruptcy cases. Mr. Lau received his Bachelor's degree from the University of Southern California, his Master's of Business Administration from the University of Hawaii and his Juris Doctorate from the University of the Pacific, McGeorge School of Law. His bar activities include serving as a trustee of the Lawyers' Fund for Client Protection and a member of the committee to revise the Hawaii Rules of Professional Conduct.

ASSOCIATE JUSTICE STEVEN H. LEVINSON (Hawai'i Supreme Court Liaison to Committee) has been an Associate Justice of the Hawai'i Supreme Court since 1992. He is the Court's liaison to HSBA, ODC, the Disciplinary Board, the Lawyers' Fund for Client Protection, and the Hawai'i Justice Foundation. Before his appointment to the Supreme Court, Justice Levinson practiced law for almost 17 years, concentrating in personal injury and commercial litigation, and he was a First Circuit Court judge, assigned to the criminal division, for three years.

JUDGE SUSAN OKI MOLLWAY was born and raised in Hawai'i. She received her bachelor's and master's degrees in English literature from the University of Hawai'i, and graduated cum laude from Harvard Law School, where she was the editor in chief of the Harvard Civil Rights-Civil Liberties Law Review. Nominated by President Clinton, Susan Oki Mollway became a United States District Judge for the District of Hawai'i in 1998. Before becoming a judge, she was a partner at the Honolulu law firm of Cades Schutte, where she concentrated in commercial litigation. One of her cases reached the United States Supreme Court, where she argued successfully. In 1998, Judge Mollway received the Trailblazer Award from the National Asian Pacific American Bar Association. She was named the Outstanding Woman Lawyer of the Year in 1987 by the Hawai'i Women Lawyers and was the 1999 Edith House Lecturer at the University of Georgia School of Law. She was recently awarded the 2004 Outstanding Judicial Achievement Award by the Hawai'i Women Lawyers.

MICHAEL F. NAUYOKAS, ESQ. has mediated over 900 employment, labor, personal injury insurance, bad faith, Jones Act, longshore, commercial, products liability, construction, workers' compensation and other disputes in Honolulu and has been selected as an arbitrator in over 150 more. Over 99% of the cases he mediated were settled in one day. All but three subsequently settled. He has a boutique law practice specializing primarily in mediation and arbitration and employment and labor law. Mr. Nauyokas holds an "AV" rating (the highest possible) under the Martindale-Hubbell Rating System, is named in the Martindale-Hubbell Bar Register of Preeminent Lawyers, is named in The Best Lawyers Guide and The Best Lawyers in America, and has been featured in Honolulu Magazine's "Best Lawyers in Hawai'i" and Midweek's "Newsmakers." He is a Fellow of the American College of Civil Trial Mediators and member of the United States District Court Mediation Committee for the District of Hawai'i.

Mr. Nauyokas is a frequent lecturer on numerous topics in mediation, arbitration, employment and labor law areas. Mr. Nauyokas has taught numerous courses in Negotiation, and Employment & Labor Law at the University of Hawai'i and Hawai'i Pacific University. He has appeared as an expert on ADR and Employment Law on numerous television and radio shows. Among the numerous organizations he has served as a lecturer are: The U.S. Department of Labor, the EEOC, the Office of Federal Contract Compliance Programs (OFCCP), the Society for the Professionals in Dispute Resolution (now ACR), National Employment Lawyers Association ("NELA"), the American Arbitration Association, the Society for Human Resource Management, and the Hawai'i Employers Council.

NATHAN NIKAIDO, a 1978 graduate of the University of Hawai'i (B.A., Economics). 1978-1983 Masters degree program, Urban and Regional Planning. (Use of mediation in the resolution of land use disputes). 1982-present, volunteer mediator, The Mediation Center of the Pacific. Approximately 1,600 cases mediated at District Court. 1985-present, Accountant, The Mediation Center of the Pacific. 2004 Liberty Bell award recipient, Hawai'i State Bar Association.

TERENCE O'TOOLE, ESQ. is an alumni of UC Berkeley, Boalt Hall School of Law and was admitted to the California Bar in 1971, the Hawai'i Bar in 1972 and the D.C. Bar in 1989. He is a director of the law firm Starn O'Toole Marcus & Fisher and has over twenty-five years experience in the area of commercial and complex litigation, with an emphasis in construction claims and disputes representing owners, contractors and design professionals. Mr. O'Toole co-authored an article for the Hawai'i Bar Journal that has been republished in the "Giants" of the Trial Bar V: Cross-Examination of Expert Witness. He has also organized and spoken at various professional seminars and legal conferences in California, Hawai'i and Singapore on construction claims. Mr. O'Toole was named in "Best Lawyers in America."

WESLEY T. PARK served Hawai'i Dental Service as its former President and CEO from 1995-2001. Currently, he is president of Maunawili Consulting. Mr. Park holds a bachelor's and master's of education degree from the University of Hawai'i, IMLE certificate from Harvard University, and an Honorary Doctor of Philosophy degree from Hong-ik University in Korea. He served as Captain in the U.S. Air Force and was on active duty from 1960-1965. He was Vice-President for Administration at the East-West Center, Dean Emeritus for the College of Continuing Education and Community Service at UH, and Director of the Small Business Management Program at UH. Mr. Park has also served on the boards of many businesses and organizations including the Honolulu Academy of Arts, Coalition for a Drug-Free Hawai'i, First Hawaiian Bank, Korean Chamber of Commerce, Honolulu Symphony Society, Verizon Hawai'i, and Rehabilitation Hospital of the Pacific.

JUDITH ANN PAVEY, ESQ. has been in the private practice of law since 1978. Her practice is concentrated on litigation, primarily plaintiff personal injury but with extensive criminal defense and some corporate litigation. A graduate of Purdue University (B.A.) and Indiana University (J.D.), Judy is a member of the American Board of Trial Advocates, American Inns of Court, and the Consumer Lawyers of Hawaii.

JUDGE KAREN M. RADIUS graduated from the George Washington University National Law Center in Washington D.C. in 1974. After being admitted to the Hawai'i Bar that same year, she began work with the Legal Aid Society of Hawai'i as a staff attorney. From 1974-1979, she served in numerous capacities with the Legal Aid Society including that of supervising attorney of the Waianae Legal Aid office and acting Executive Director. In 1980, Judge Radius established the law firm of Radius & Lau that continued until she was appointed to the Family Court bench as a per diem judge in 1993. In 1994, she was appointed as a full time Family Court judge. She has served in each of the divisions of the Family Court, including being lead of the Domestic Division handling divorces, child custody, support and property division cases. In 2001, she was the founding judge of the new Hawai'i Juvenile Drug Court.

JILL J. RAMSFIELD. Ms. Ramsfield is a Professor of Law and Director of Legal Research and Writing at the William S. Richardson School of Law. Professor Ramsfield was previously a tenured faculty member at Georgetown University Law Center. Professor Ramsfield is a graduate of Wellesley College (B.A.) and the University of Wisconsin (B.S., J.D.). In addition to her law school teaching, Professor Ramsfield teaches continuing legal education courses nationally and internationally, helping lawyers to write better, faster. Her clients include law firms, government agencies, judges, and magistrates. She has developed a specialty working with individual attorneys to create techniques uniquely suited to their styles and law practices. Professor Ramsfield is the author of, among other publications, *Is Logic*

Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom 47 J. LEGAL ED. 157 (1997); *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (West 2000); *CULTURE TO CULTURE: A GUIDE TO U.S. LEGAL WRITING* (Carolina Academic Press 2005); and co-author with Mary Ray of *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (West 4th ed. 2005).

CAROLE R. RICHELIEU, ESQ. is Chief Disciplinary Counsel of the Office of Disciplinary Counsel and Fund Administrator for the Lawyers' Fund for Client Protection. She received her B.A. degree with High Honors from the University of Hawai'i in both Pre-Law (Criminology) and Psychology and her J.D. degree from the William S. Richardson School of Law. She engaged in civil litigation practice and served as a member of the Medical Claims Conciliation Panel and arbitrator for the Better Business Bureau before joining ODC in 1989.

She has made numerous presentations on legal ethics and client protection to law firms, law students, legal professionals, and the public, as well as authored many articles and contributed to various manuals. Currently, she is a member of the Hawai'i Supreme Court's Commission on Professionalism, as well as co-chair on the Hawai'i Supreme Court's course on professionalism. Formerly, she was a co-chair of Hawaii's Chief Justices' National Action Plan which produced the first report in the nation. She has served as a Supreme Court appointee to the Committee to Review the Code of Judicial Conduct, the Committee on the Certification of Legal Specialists, and the Committee on Unbundling Legal Services/Unauthorized Practice of Law and continues to serve on the Board of Examiners.

She is a Bencher with the American Inn of Court and a notary, and a member of the ABA, HSBA, National Organization of Bar Counsel (NOBC), National Client Protection Organization (NCPO), and the ABA Center for Professional Responsibility. She was appointed by the ABA to serve on the ABA's Advisory Commission on Lawyers' Funds for Client Protection (2000-2001) and Chair the ABA's Advisory Commission on Lawyers' Funds (2001-2002). A former Vice-President of NCPO, she is now President and continues to serve as NCPO's liaison to the ABA and the ABA Center Coordinating Council, as well as on NCPO's Trustee Training Project. She has served on the Nominating Committees of both NOBC and NCPO. She also represented the United States on an International Bar Association client protection panel in October 2004.

She also serves on the HSBA's Goal Group 2 (which promotes the integrity and competency of Hawai'i lawyers) and the Task Force on Public Protection, and is liaison with HSBA, as well as served on the Subcommittee on Disciplinary Rules for the Standing Committee on Lawyer Competence and various other committees.

JUDGE TRUDY SENDA has been a judge of the District Court of the Fifth Circuit since May 2001. Prior to that, she was in private practice for 17+ years in Honolulu and Kauai. She currently serves as the acting deputy chief judge for the circuit regarding matters involving the District Court's jurisdiction over criminal, traffic and civil matters.

KEVIN K. TAKATA, ESQ. graduated from Case Western University School of Law. He was an associate with Oliver, Cuskaden & Lee from 1984 to 1987, general civil practice; Honolulu Deputy Prosecuting Attorney from 1987 to present; member of the Homicide Team from 1990 to 1996; Trials Division Chief from 1997 to 2006. He handles primarily homicide cases. He lectures in various areas of criminal prosecution to other prosecutors, police and law enforcement groups. He is an instructor at the National Advocacy Center, a national training center for prosecutors and district attorneys.

JUDGE TERENCE T. YOSHIOKA has been a District Family Court judge since April 28, 2000. He graduated from the University of Washington School of Law in 1969 and the University of Hawai'i in 1966. He was a former partner of Nakamoto, Yoshioka and Okamoto, a Law Corporation.

CALVIN E. YOUNG, ESQ., a partner with Ayabe Chong Nishimoto Sia & Nakamura, is a 1982 graduate of the William S. Richardson School of Law. His practice concentrates on cases involving professional liability, aviation and product liability. Mr. Young was a member of the Disciplinary Board of the Hawai'i Supreme Court from 1995 to 2001 and since 2002 is the Chair of the HSBA Committee on Professional Responsibility.

Appendix

“C”

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of October 12, 2007

2:30 p.m. - 3:20 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley, David Hall, Associate Justice Steven Levinson, Judge Susan Oki Mollway, Michael Nauyokas, Nathan Nikaido, Terence O'Toole, Wesley Park, Judith Pavey, Judge Karen Radius, Jill Ramsfield, Carole Richelieu, Kevin Takata, and Calvin Young

HANDOUTS:

- (1) Agenda
- (2) Order Amending Rule 2.24 of the Rules of the Supreme Court of the State of Hawai'i dated October 2, 2007 with Amendment dated October 4, 2007
- (3) Order Amending Rule 17(d) of the Rules of the Supreme Court of the State of Hawai'i dated October 10, 2007
- (4) American Bar Association Recommendation adopted by the House of Delegates August 13-14, 2007 re plan for law practice contingencies in event of death, disability, disappearance, disbarment, etc.
- (5) HSBA materials re 2007 HSBA Bar Convention and online CLE and seminar catalog

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy announced that Commission member Judge Karen Radius was selected as the 2007 Jurist of the Year by Chief Justice Ronald T.Y. Moon, and offered the Commission's congratulations.

Justice Duffy related that the Commission's Second Report to the Hawai'i Supreme Court was submitted to Chief Justice Moon in June. Upon review of the Report, Chief Justice Moon related his thanks to the Commission for the work done.

II. STATUS REPORT RE AMENDMENT OF RSCH 2.24 (AUDIT OF TRUST ACCOUNTS) AND RSCH 17 (THE HAWAI'I STATE BAR RE DISCLOSURE OF INSURANCE ON ATTORNEY REGISTRATION STATEMENT) BY JUSTICE DUFFY

- A. The Order Amending Rule 2.24 was filed on October 2, 2007 with Amendment dated October 4, 2007 (see handout)
- B. The Order Amending Rule 17(d) was filed on October 10, 2007 (see handout). Lyn Flanigan related that the insurance disclosure information required by this rule revision should be compiled and available to the Commission in February, 2008.

III. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION

- A. Calvin Young reported regarding the proposed mandatory refresher course on Professionalism and Ethics. Representatives of the Committee met with Lyn Flanigan and representatives of the HSBA CLE and Professionalism Responsibility committees to discuss creation and content of such a course. A consensus was not reached on the contents; it was noted that the contents of such a course would need to be reviewed by Carole Richelieu to ensure that the substantive contents accurately reflect Hawaii's Rules of Professional Conduct, as jurisdictions differ. There was consensus that the course should be presented by Internet access. Lyn Flanigan distributed a handout showing that a large number of ethics courses from other bar associations are presently available in the HSBA's online CLE offerings, and suggested that one or more of these courses may be utilized or tailored for our course. Judy Pavey, David Hall, and Steve Dixon volunteered to review some of the online courses to see whether they may be helpful.
- B. Lyn Flanigan reported regarding the proposed survey of HSBA members regarding what CLE programs members would like to see offered. It was noted that the HSBA has software available to do such a survey but that framing of the survey's questions is critical to obtaining meaningful information. Susan Arnett volunteered to assist in the drafting of the survey.

IV. REPORT OF COMMITTEE RE "OF COUNSEL" RELATIONSHIPS

Carole Richelieu reported that she has had discussions with HSBA representatives Crystal-Rose and Jackie-Earle regarding the presently existing Disciplinary Board formal opinion regarding "Of Counsel" relationships. The consensus is that some additional clarification of the present opinion would be helpful, and their discussions will continue.

V. NEW BUSINESS

- A. The American Bar Association Recommendation that bar associations and/or courts develop a plan for law practice contingencies in the event of death, disability, disappearance, disbarment, etc. (see handout) was introduced as New Business. Justice Duffy related his understanding that 29 states at present have either a bar program or court rule which addresses this issue. Carole Richelieu related that the lack of a contingency plan is presently a problem (ODC has 10 trusteeships ongoing at present) and that the problem will only get worse as "baby boomer" bar members are aging. Steve Dixon volunteered to seek information as to what other jurisdictions are doing to address this problem. Justice Levinson suggested that serving as a trustee in this situation would qualify as "pro bono" service. Lyn Flanigan related that the HSBA would be interested in providing CLE programming in this area.
- B. Lyn Flanigan reminded the members of the upcoming HSBA Bar Convention and distributed a handout with Convention information.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of February 15, 2008

2:40 p.m. - 3:40 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Lyn Flanigan, Associate Judge Daniel Foley, David Hall,
Nathan Nikaido, Judge Karen Radius, Professor Jill Ramsfield, and
Carole Richelieu
Guest: Hisae Ishii-Chang

HANDOUTS: (1) Agenda
(2) February 2008 Hawaii Bar Journal article by Jeffrey Sia, HSBA
President Re Mandatory CLE
(3) Proposed Disciplinary Board Revised Formal Opinion No. 43
Re "Of Counsel" Relationships
(4) Letter dated January 30, 2008 from Carole R. Richelieu to
Justice Duffy Re Proposed Revision of Rule 17 of the Rules of
the Supreme Court to require a plan for law practice
contingencies in the event of an attorney's death, disability, etc.

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy announced that Judge Terry Yoshioka retired at the end of December 2007 and resigned as a member of the Commission. Judge Yoshioka's wife died unexpectedly last fall and he wants to devote his time to his grandchildren. We will miss him, and thank him for his faithful attendance and work for the Commission.

On a positive note, Justice Duffy announced that Hisae Ishii-Chang, the Director of Programs for the HSBA, will be helping the Committee on Mandatory Continuing Legal Education. Lyn Flanigan introduced Hisae as an attorney with a diverse background who will be of great assistance to the Commission's CLE work.

II. REPORT OF COMMITTEE RE MANDATORY INSURANCE DISCLOSURE

Lyn Flanigan related that the two-part question on the attorneys' registration statement created some confusion as to whether the attorney was actually in active private practice, which required the HSBA to clarify the status of numerous attorneys. As soon as the process is completed, the HSBA will present the best information available as to the number of active private practitioners who are insured/uninsured.

III. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION RE:

A. Mandatory CLE Generally

Justice Duffy related that HSBA President Jeff Sia's article in the February Hawaii Bar Journal was a "hot off the press" article of great interest to the Commission and the Supreme Court (see handout). The article raises the issue of whether the time has come for mandatory CLE, and points out that only nine states do not have a mandatory continuing legal education requirement for their lawyers. The article concludes by stating that if the time has come for mandatory CLE, the Bar would be better off getting on the ground floor to help shape such a requirement.

Justice Duffy further related that Chief Justice Moon and the other Justices were not pleased to learn that we are in the minority 20% of the states on this issue. In a Justices' conference, the Court made it clear that (1) progress needs to be made on this issue, and (2) while the Court would prefer that the Commission work with the Bar to come up with a workable plan, if the Commission does not come up with a plan, the Court will move forward on its own.

B. Mandatory Course on Professionalism and Ethics

Judge Foley related that there is a need to rejuvenate the committee as three of the original eight committee members are no longer Commission members. Judge Foley anticipates calling upon additional representatives of the Judiciary, Law School, and the Bar to add new blood to the committee.

Justice Duffy announced that with the consent of current co-chairs Judge Foley and Calvin Young, Professor Ramsfield has agreed to join the committee as a third co-chair. In addition to her "regular" law teaching

experience, Professor Ramsfield has extensive experience in CLE programming, which will be of great benefit to the committee.

- C. Presentation (1) at a Judicial Education Conference Re What Judges Can Do to Encourage Professionalism and (2) to HSBA Members Re Professionalism and What Judges Expect of Attorneys Appearing in Their Courts

Judge Foley related that, per his discussion with Justice Duffy, (1) Judge Senda has agreed to head up the presentation (previously the work of Judge Yoshioka), and that Judges Radius and Cardoza, both members of the Commission, have agreed to be on the panel, and (2) Associate Justice Nakayama, the Judicial Education Committee Chair, is considering recommending the panel's presentation at the Judiciary Spring 2009 conference.

Carole Richelieu suggested that Judge Senda's committee may want to contact retired Judge James Burns (president of the Aloha Chapter of the American Inn of Court) as the Inn annually presents an excellent seminar to its student members regarding proper conduct in court.

- D. Survey of HSBA Members Re CLE Programs the Attorney Would Like to See Offered

Lyn Flanigan reported that a survey was sent to the HSBA CLE committee, with limited results. Lyn suggests that the HSBA intends to send a comprehensive survey electronically to all its members with different phraseology intended to get more meaningful responses.

IV. REPORT OF COMMITTEE RE "OF COUNSEL" RELATIONSHIPS

Carole Richelieu discussed the proposed Disciplinary Board revised Formal Opinion No. 43 re "Of Counsel" Relationships (see handout) she drafted in consultation with HSBA's selected attorneys Jacqueline Earle and Crystal Rose. Carole related that it was their consensus that the revised opinion would define and clarify "of counsel" relationships, and covered all situations she and her committee members could envision.

Lyn Flanigan related that the revised opinion did not formalize the nature of the of counsel relationships as she had anticipated. After discussion, Justice Duffy requested that Lyn discuss this matter with the HSBA and provide a response to the proposed revised opinion within 30 days.

V. COMMITTEE RE PLAN FOR LAW PRACTICE CONTINGENCIES IN EVENT OF DEATH, DISABILITY, ETC.

Carole Richelieu discussed the contents of her January 30 letter to Justice Duffy regarding a proposed revision of Rule 17 of the Rules of the Supreme Court (RSCH) to require a plan for law practice contingencies in the event of an attorney's death, disability, etc. Carole is not advocating that this be an "ethics rule," but envisions it as a regulation. Carole related that such a plan is currently needed, as her office is presently handling 11 trusteeships, and she anticipates that the need will only increase in the future, as the average age of the Bar members (here, and nationwide) is increasing. Carole's proposal would include granting the "inventorying lawyer" the protections given a trustee under Rule 2.20 of the RSCH.

In the ensuing discussion, David Hall related that malpractice carriers are now requiring that a solo attorney appoint a designated person to be responsible for the orderly transfer of client matters in the event of death, disability, etc.

Justice Duffy requested that Lyn discuss this matter with the HSBA and provide a response to the proposed Rule change within 30 days.

VI. NEW BUSINESS

Judge Cardoza contacted Justice Duffy and related that he, Judge Barbara Richardson, and Judge Jennifer Ching recently attended a mainland conference regarding pro se litigants, and anticipate that our Rules of Professional Conduct may need revision to make it clear that attorneys can provide representation to clients on a limited basis. Judge Cardoza is presently researching this issue, and will get back to us with a proposal.

Carole Richelieu related that the "unbundling" issue was studied by a previous Supreme Court committee within the last ten years. Carole's recollection is that the committee's report concluded that a rule revision was not necessary to accommodate limited basis representation. Carole will try to locate the report and Justice Duffy will forward it to Judge Cardoza.

Judge Foley related that the "unbundling" issue was discussed in the recent Access to Justice Hui Report, with particular reference to the present Family Court situation.

Judge Radius related that the pro se issue is a major problem in Family Court, as approximately 60% of Family Court cases involve a pro se litigant.

VII. NEXT MEETING

The next Commission meeting will be on May 2, 2008 at 2:30 p.m., as we need to get our Annual Report out in June.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of May 2, 2008

2:30 p.m. - 3:50 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Judge Joseph Cardoza, Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley, David Hall, Grace Nihei Kido, Gayle Lau, Judge Susan Oki Mollway, Nathan Nikaido, Terence O'Toole, Wesley Park, Judith Pavey, Jill Ramsfield, Judge Trudy Senda, Kevin Takata, and Calvin Young
Guests: Hisae Ishii-Chang, Charles Hite, and Michael Lee

HANDOUTS: (1) Agenda
(2) HSBA 2008 Renewal Survey of Liability Insurance
(3) February 2008 Hawaii Bar Journal article by Jeffrey Sia, HSBA President Re Mandatory CLE
(4) Letter dated April 7, 2008 from Jeffrey H. K. Sia to Justice Duffy Re Inventory Attorney Requirement and "Of Counsel" Opinion
(5) HSBA Pro Bono Report

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy introduced guests Charles Hite (Deputy Chief Disciplinary Counsel) and Michael Lee (Assistant Disciplinary Counsel), who attended the meeting on behalf of the Office of Disciplinary Counsel.

Justice Duffy congratulated Professor Jill Ramsfield, who was named the 2008 Recipient of the Board of Regents' Excellence in Teaching Award, the highest honor awarded by the Board of Regents to a faculty member for teaching excellence.

II. REPORT RE INSURED/UNINSURED STATUS OF HSBA MEMBERS IN ACTIVE PRIVATE PRACTICE

Lyn Flanigan discussed the numbers of insured/uninsured HSBA members shown in the handout (see handout), as well as the difficulties in arriving at the

numbers shown. While the numbers are not precise, Lyn expressed confidence that the following conclusions drawn from the survey are relatively accurate:
(1) approximately 74% of active private members are insured, and
(2) approximately 55% of the solo practitioners maintain liability insurance.

Lyn related her understanding that the market for legal malpractice policies is presently "soft," meaning that it is favorable to lawyers seeking the coverage.

With the survey information having been gathered, Justice Duffy referred this matter back to the Commission's Committee on Insurance Disclosure (co-chaired by Terry O'Toole and Wesley Park) for its recommendation whether (1) the Rules of Professional Conduct should be revised to require attorneys to disclose in writing to their clients/potential clients if they do not have professional liability insurance and/or (2) clients/potential clients have internet access to an attorney's disclosure on their registration statement regarding whether they have professional liability insurance.

III. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION RE:

A. Mandatory CLE generally

Co-chair Calvin Young reported that his committee did not recommend that CLE be made mandatory in 2005 based upon its survey which showed that most lawyers attend some CLE courses and/or are members of a firm or government law office which has "in-house" CLE programs.

B. Mandatory course on Professionalism and Ethics

Calvin further reported that, while the committee did not recommend mandatory CLE in 2005, the committee did recommend that Hawai'i should consider creating a mandatory refresher course on Professionalism and Ethics, which course could be presented by internet access. Calvin related the efforts made by the committee over the past two years to plan such a course, and the logistical and other difficulties the committee encountered. A lively discussion followed in which a number of concerns were expressed, including (but not limited to): (1) the demands already made upon lawyers to do additional pro bono work; (2) the pressure to survive economically; and (3) the cost and time commitment of any required CLE program.

Justice Duffy acknowledged the concerns expressed, but stated that, in his opinion, it is in the Commission's best interest to come up with a reasonable, workable, and cost-effective course on Professionalism and Ethics for the following reasons: (1) the Supreme Court is committed to requiring such a course, and is looking to the Commission for a reasonable, workable, and cost-effective proposal for the court to consider; (2) lawyers in Hawai'i are privileged to be self-regulated, unlike medical doctors, certified public accountants, realtors, and others, who are government-regulated and subject to continuing education requirements. There appears to be increasing interest in the legislature to regulate lawyers and our vulnerability is increased by the lack of any continuing education requirement, and (3) HSBA President Jeff Sia's editorial in the February 2008 Hawaii Bar Journal "Mandatory CLE - has its time come" has highlighted our status as one of ten jurisdictions in the United States without a mandatory CLE requirement.

In view of the foregoing, Justice Duffy requested that Calvin's committee (also co-chaired by Judge Dan Foley and Professor Jill Ramsfield) come up with a reasonable, workable, and cost-effective course plan for the Supreme Court to consider by the time of our next Commission meeting in September 2008.

C. Presentation (1) at a Judicial Education Conference re what judges can do to encourage professionalism and (2) to HSBA members re professionalism and what judges expect of attorneys appearing in their courts

Chair Judge Trudy Senda reported that she is working with Judge Joe Cardoza and Judge Karen Radius to prepare such a presentation. Judge Senda further reported that (1) the Judiciary Education Committee needs to approve such a presentation; (2) if approved, the earliest presentation date would be at the Spring 2009 Judicial Education Conference; and (3) the approach of the presentation will not be "lawyer-bashing," but will be intended to elevate the performance of the judges as well as lawyers. Assuming the presentation to the judges goes forward, Judge Senda will work with Lyn Flanigan on a similar program for the HSBA.

D. Survey of HSBA members re CLE programs the attorney would like to see offered

Lyn Flanigan reported that the HSBA is working on the survey.

IV. MINOR MISCONDUCT REFERRALS FROM ODC TO THE ATTORNEYS AND JUDGES ASSISTANCE PROGRAM (AAP)

Steve Dixon, Director of AAP, reported that he has received several referrals from ODC for mentoring of lawyers accused of minor misconduct not warranting formal ODC disciplinary proceedings, and which have not involved drug or alcohol-related dependency problems. While Steve is willing to assist, he expressed his concern that HSBA members also be involved as mentors. Lyn Flanigan reported that she, Steve, Calvin Young, and ODC Deputy Chief Disciplinary Counsel Charles Hite are presently working together to work out the present procedural problems in the HSBA Minor Misconduct Program, and hopes to get the program back up and running shortly.

V. RESPONSE OF HSBA TO REPORT OF COMMITTEE RE “OF COUNSEL” RELATIONSHIPS

HSBA President Sia sent a letter to Justice Duffy dated April 7, 2008 (see handout) in which he stated that the HSBA board chose not to comment on the proposed revised opinion re “of counsel” relationships suggested by Carole Richelieu, Jacqueline Earle, and Crystal Rose.

Based upon the above, the Commission agreed to support the proposed revised opinion of the Disciplinary Board, and thanked the committee for its work.

VI. RESPONSE OF HSBA TO COMMITTEE REPORT RE PLAN FOR LAW PRACTICE CONTINGENCIES IN EVENT OF DEATH, DISABILITY, ETC.

HSBA President Sia’s letter described above herein states the HSBA’s position that it does not recommend the adoption of a rule regarding designation of an “inventory attorney.” While not formally opposed to the HSBA position, ODC attorney Charles Hite expressed his concern that the ODC is facing an increasing number of trusteeships with their consequential time commitments.

Based upon the rationale set forth in President Sia's letter, the Commission agreed not to recommend the adoption of a rule requiring designation of an inventory attorney.

VII. FORMATION OF COMMITTEE TO REVIEW POSSIBLE NEED TO REVISE HAWAI'I RULES OF PROFESSIONAL CONDUCT RE *PRO SE* LITIGANTS AND "UNBUNDLING OF LEGAL SERVICES" ISSUE

Judge Cardoza related that he, Judge Barbara Richardson, and Judge Jennifer Ching recently attended a mainland conference regarding *pro se* litigants, which discussed the issue of whether our Rules of Professional Conduct need to be revised to make it clear that attorneys can provide representation to clients on a limited basis. Judge Cardoza further related several instances in his court where opposing attorneys have objected to the presence of attorneys who are participating as counsel on a limited basis. While Judge Cardoza is aware that a prior study of this issue some time ago may have concluded that a rule revision was not necessary to accommodate limited basis representation, based upon his personal experience, the rule may need to be revised as the practical problems continue.

Judge Cardoza recommended that the Commission establish a committee to review this issue, and agreed to serve as the committee's chair. Justice Duffy agreed to serve on the committee. Anyone interested in joining the committee, please contact Judge Cardoza.

VIII. NEW BUSINESS

Lyn Flanigan reviewed and discussed the numbers shown on the HSBA Pro Bono Report (see handout). While the numbers of hours may be subject to question, the numbers reported in the mandatory 2007 reporting show a significant increase in pro bono hours by HSBA members.

IX. NEXT MEETING

The next Commission meeting is scheduled for Friday, September 5, 2008 at 2:30 p.m. in the Supreme Court conference room.

THANKS FOR COMING!

Appendix

“D”

IN THE SUPREME COURT OF THE STATE OF HAWAII

EMILIANO
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FILED

In the Matter of the Amendment
of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

ORDER AMENDING RULE 17(d) OF THE RULES OF THE
SUPREME COURT OF THE STATE OF HAWAII

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rule 17(d) of the Rules of the Supreme Court of the State of Hawaii is amended, effective December 1, 2007, as follows (deleted material is bracketed and stricken; new material is underscored):

(d) Member registration, information, assessment, suspension and status.

(1) MEMBER REGISTRATION. Each member of the Hawaii State Bar shall file an attorney registration statement and provide such information as the Board of Directors may require. A member shall notify the Hawaii State Bar, in writing, within thirty (30) days of any change of such required information. At minimum, ~~[F]~~ the registration statement shall ~~[include a]~~ require disclosure of ~~[any]:~~

(i) professional discipline or convictions ~~[(except) in any jurisdiction, provided that convictions for offenses [which] that are or would be classified under Hawaii law as petty misdemeanors [or], violations, [such as traffic citations) in any jurisdiction:]~~ or infractions need not be disclosed;

(ii) hours of pro bono service for the previous year. Pro bono service hours for individual members shall be confidential, and the Hawaii State Bar shall disclose such information only in aggregate reports of pro bono hours for the entire membership; and

(iii) 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.

(2) INFORMATION TO DISCIPLINARY COUNSEL. The Hawaii State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board information regarding: (1) the members' addresses for service of process as required by Rule 2.11 of these rules; (2) members' certification of annual compliance with trust accounting procedures as required by Rule 11(f) of these

rules: (3) members' certification of compliance with accounting rules, as required by Rule 1.15(f)(3) of the Rules of Professional Conduct; and (4) the disclosure of professional discipline or convictions required in subsection (i) 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.

~~[(2)]~~(3) DUES, FEES AND CHARGES. Each member shall pay to the Bar the following dues, fees or charges:

~~[(3)]~~ (4) ADMINISTRATIVE SUSPENSION. Failure to file a properly completed attorney registration statement 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.

~~[(4)]~~(5) REINSTATEMENT. Any attorney suspended under the provisions of ~~[(3)]~~(4) above shall be reinstated by the Hawai'i State Bar without further order upon:

~~[(5)]~~(6) EXEMPTIONS.

~~[(6)]~~(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.

~~[(7)]~~(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, may advise the Bar in writing that the attorney desires to assume inactive status and discontinue the practice of law in Hawai'i. Upon the filing of such notice, 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 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 jurisdictions of this court, the Disciplinary Board, the Lawyers' Fund for Client Protection, the Attorneys and Judges Assistance Program and the Bar.

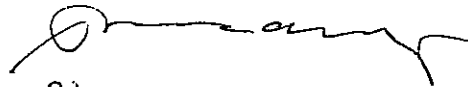
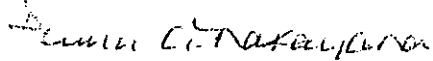
~~[(8)]~~(9) RETURN FROM INACTIVE STATUS. An attorney on inactive status remains in that status until and unless the attorney requests and is granted

reinstatement to the active roll. Reinstatement shall, unless the attorney is subject to an outstanding order of suspension or disbarment, be automatic upon the payment to the Bar of the dues and fees for the year the request is made, satisfaction of such other requirements as may be imposed from time to time by the Board of Directors of the Bar or this court or both, payment of any processing fee(s) and charges required by the Board and payment of the most recent assessment to the Lawyers' Fund for Client Protection.

DATED: Honolulu, Hawai'i, October 10, 2007.



Steven H. Leinson



Kara E. Duggan

Appendix

“E”

**Hawaii State Bar Association
2008 Renewal Survey of Liability Insurance**

Late in 2007, the Supreme Court implemented an amendment to RHSC17(d) which required disclosure of professional liability insurance by active members *except* government lawyers (including judges) or in-house counsel not representing other clients. The rule required this disclosure under penalty of administrative suspension.

The following question was posed in the written and electronic registration forms:

***6. PROFESSIONAL LIABILITY INSURANCE (RHSC Rule 17(d)(iii))**
a) I certify that I am a government attorney or In-House counsel and I do not represent clients outside that capacity or I am Inactive:

Yes No

b) Do you currently carry Professional Liability Insurance?

Yes No

There was a lot of confusion in answering 6(a), so in developing the report, we extracted from our database all Active members, excluding all members in the Inactive, Judge, and Government categories. This group totaled 3613. Of this group of 3613, 491 excluded themselves by answering "yes" to 6(a), presumably because they are In-House counsel, leaving 3122 members in the pool of "active, private practice."

The responses from this group were as follows:

Pool:	3122	
NOT insured	821	42 in firms 779 solos (overreported: includes several who work for entities but maintain active status)
Insured	2301:	1057 in firms of 5 or more attorneys 88 in firms of 4 attorneys 63 in firms of 3 attorneys 132 in firms of 2 attorneys 961 SOLOS (overreported: includes several who work for entities but maintain active status)

**Approximately 74% of active private practice members are insured.
Approximately 55% of the solo practitioners maintain liability insurance.**

4/22/08

Appendix “F”

HSBA

Hawaii State Bar Association

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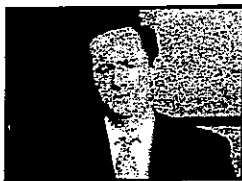
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Hawaii State Bar Association

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All of the courses in this HSBA online catalog are accredited for California credit.

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This, all new CLE course brings together a panel of experts who can take you through the process and help you respond to the IRS in the most effective way possible.

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In this program you will learn the basic features of a compensation package with particular emphasis on the new rules of code 409A, tax issues in typical employment contracts and solutions to avoid adverse tax consequences.

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Media	Title	CLE Units	Ethics	User Rating	Price
Telephone Seminar	Negotiation Ethics: Winning Without Selling Your Soul - Part C, December 18, 2007 - Multiple Dates Available 9:00 AM (Hawaii) More Information > Register	1.0	1.0	N/A	\$50.00
Tele-Web Seminar	From Paper to PDF: Transitioning Your Practice to Electronic Client Files - Dec 12, 2007 6:00 AM (Hawaii) More Information > Register	0.0	0.0	N/A	\$50.00
Telephone Seminar	Negotiation Ethics: Winning Without Selling Your Soul - Part B, November 20, 2007 - Nov 20, 2007 9:00 AM (Hawaii) More Information > Register	1.0	1.0	N/A	\$50.00

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Ethics

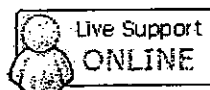
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#	Sort by: Media	Sort by: Title	Sort by: CLE Units	Sort by: Ethics	Sort by: User Rating	Sort by: Price
1	Online Seminar	Winning With Ethics and Integrity More Information Buy Now View Demo	2.0	2.0	N/A	\$100.00
2	Online Seminar	Developments in Client Confidentiality and The Attorney Client Privilege - 2/16/07 More Information Buy Now View Demo	3.25	3.25	N/A	\$100.00
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29	Online Seminar	Risky Business ~ Tips for All Attorneys on: Risk Management, Ethics, and Enjoying the Practice of Law ➤ More Information ➤ Buy Now	3.0	3.0	N/A	\$100.00
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31	Online Seminar	Ethical Issues in Elder Law Practice ➤ More Information ➤ Buy Now ➤ View Demo	1.0	1.0	N/A	\$50.00
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34	Online Seminar	Investigating Allegations of Fraud in a Public Company ▷ More Information ▷ Buy Now ▷ View Demo	1.666	1.666	N/A	\$75.00
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36	Online Seminar	Protecting and Preserving Your Client's Confidential Information ▷ More Information ▷ Buy Now	2.0	0.0	N/A	\$75.00
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40	Telephone Seminar	Negotiation Ethics: Winning Without Selling Your Soul - Part C, December 18, 2007 – Multiple Dates Available 9:00 AM (Hawaii) ▷ More Information ▷ Register	1.0	1.0	N/A	\$50.00
41	Telephone Seminar	Negotiation Ethics: Winning Without Selling Your Soul - Part B, November 20, 2007 – Nov 20, 2007 9:00 AM (Hawaii) ▷ More Information ▷ Register	1.0	1.0	N/A	\$50.00
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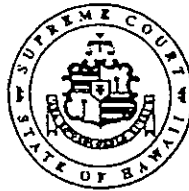


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Appendix

“G”

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Hon. Clifford L. Nakea
Jean E. Rolles, CPM
J. Michael Seabright
Thomas D. Welch

FORMAL OPINION NO. 43 (Of Counsel)

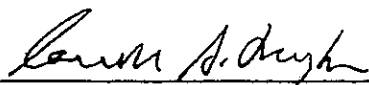
This Opinion addresses the use of the title "of counsel" on letterhead, business cards, advertisements, telephone listings, and office signs or in other circumstances where there is a representation to the public that there is some relationship between the lawyer and law firm in question.

As used herein, the term "of counsel" refers to a lawyer who, or a law firm which, has a continuing, close, and regular relationship with another lawyer or law firm. It does not refer to a relationship which is that of a partner (or principal/shareholder/officer/director in the case of a law corporation), associate, or employee. It should be noted that there are other variations on the "of counsel" title to which this opinion may apply as long as it refers to the type of relationship described herein. These titles may include the designations "counsel," "special counsel," "tax [or other specialty] counsel," or "senior counsel."


The use of the title "of counsel" in identifying the relationship of a lawyer or law firm with another lawyer or law firm is permissible as long as the relationship between the two is a continuing, close, and regular relationship and the use of the title is not false or misleading.

This opinion is based on the prohibition against misleading representations found in HRPC 7.1 and HRPC 7.5. HRPC 7.1 provides that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." HRPC 7.5 states that "[a] lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." The prohibition against misleading representations would be violated if the "of counsel" title, or one of its variants, was used to describe a relationship other than one which is continuing, close, and regular.

DATED: Honolulu, Hawai'i, March 28, 2002.

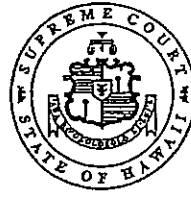


CARROLL S. TAYLOR
CHAIRPERSON, DISCIPLINARY BOARD



CAROLE R. RICHELIEU
CHIEF DISCIPLINARY COUNSEL

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Hon. Clifford L. Nakea
Jean E. Rolles, CPM
J. Michael Seabright
Thomas D. Welch

FORMAL OPINION NO. 43 (Of Counsel)
(Amended April 24, 2003)


This Opinion addresses the use of the title "of counsel" on letterhead, business cards, advertisements, telephone listings, and office signs or in other circumstances where there is a representation to the public that there is some relationship between the lawyer and law firm in question.

As used herein, the term "of counsel" refers to a lawyer who, or a law firm which, has a continuing, close, and regular relationship with another lawyer or law firm. It should be noted that there are other variations on the "of counsel" title to which this opinion may apply as long as it refers to the type of relationship described herein. These titles may include the designations "counsel," "special counsel," "tax [or other specialty] counsel," or "senior counsel."

The use of the title "of counsel" in identifying the relationship of a lawyer or law firm with another lawyer or law firm is permissible as long as the relationship between the two is a continuing, close, and regular relationship and the use of the title is not false or misleading.

This opinion is based on the prohibition against misleading representations found in HRPC 7.1 and HRPC 7.5. HRPC 7.1 provides that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." HRPC 7.5 states that "[a] lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." The prohibition against misleading representations would be violated if the "of counsel" title, or one of its variants, was used to describe a relationship other than one which is continuing, close, and regular.

DATED: Honolulu, Hawai'i, April 24, 2003.



CARROLL S. TAYLOR
CHAIRPERSON, DISCIPLINARY BOARD



CAROLE R. RICHELIEU
CHIEF DISCIPLINARY COUNSEL

Appendix

“H”

PROPOSED REVISED FORMAL OPINION NO. 43 (Of Counsel)

This Opinion addresses the use of the title "of counsel" on letterhead, business cards, advertisements, telephone listings, and office signs or in other circumstances where there is a representation to the public that there is some relationship between the lawyer and law firm in question.

As used herein, the term "of counsel" refers to an actively-licensed lawyer who, or a law firm which, has a continuing, close, and regular relationship with another lawyer or law firm. Any jurisdictional limitations on the practice of the "of counsel" lawyer or law firm must be stated on the affiliated firm's letterhead and other public communications in which the name of the "of counsel" lawyer or law firm is included. It should be noted that there are other variations on the "of counsel" title to which this opinion may apply as long as it refers to the type of relationship described herein. These titles may include the designations "counsel," "special counsel," "tax [or other specialty] counsel," or "senior counsel."

The use of the title "of counsel" in identifying the relationship of a lawyer or law firm with another lawyer or law firm is permissible as long as the relationship between the two is a continuing, close, and regular relationship and the use of the title is not false or misleading.

This opinion is based on the prohibition against misleading representations found in HRPC 7.1 and HRPC 7.5. HRPC 7.1 provides that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." HRPC 7.4 states that "[a] lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1." The prohibition against misleading representation would be violated if the "of counsel" title, or one of its variants, was used to describe a relationship other than one which is continuing, close, and regular.

DATED: Honolulu, Hawai'i, _____

1/31/08

Appendix

“1”

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES

August 13-14, 2007

RECOMMENDATION

RESOLVED, That the American Bar Association urges bar associations and courts to develop, adopt, promote and implement programs and procedures to encourage and enable lawyers to plan for law practice contingencies by designating in advance another lawyer who is willing and able to assume the lawyer's practice or to assist in the transfer of client matters and papers and electronic files; in the event that the lawyer has any physical or mental disability that significantly impairs the lawyer's ability to practice law, or the lawyer has died, disappeared, been suspended or disbarred, or otherwise been restricted from the practice of law. The designee shall be in good standing in the jurisdiction where the lawyer is practicing law, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction.

Appendix

“J”



April 7, 2008

The Honorable James E. Duffy
Supreme Court of Hawaii
417 S. King St.
Honolulu, HI 96813

Re: Commission on Professionalism
• Inventory Attorney Requirement
• "Of Counsel" Opinion

Dear Justice Duffy:

The Hawaii State Bar Association Board of Directors considered and discussed the two issues noted above, which were addressed by the Commission on Professionalism and responds as follows:

Inventory Attorney Requirement: Although the wisdom and practicality of designating an "inventory attorney" to take over another attorney's records and files in the event the attorney is incapacitated or dies is appreciated, the HSBA noted that there were numerous issues involved with such a requirement that may have not been fully considered. These other issues include, but are not limited to, any disclosure requirements to existing clients of the "inventory attorney;" potential liability exposure to the "inventory attorney;" and the ODC's role and activity when an attorney becomes incapacitated or dies. While it may be advisable and prudent for an attorney to designate an "inventory attorney," the HSBA prefers and recommends the promotion of educational programs for the solo attorney practitioners relating to office management and succession issues. Therefore, the HSBA does not recommend the adoption of a rule requiring designation of an "inventory attorney."

"Of Counsel" Opinion: As this is a standing opinion of the Disciplinary Board, the HSBA Board chose not to comment on the opinion.

Please feel free to call me if you have questions or wish to further discuss these issues.

Sincerely,

Jeffrey H. K. Sia
President
Hawaii State Bar Association

cc: Carole R. Richelieu, Chief Disciplinary Counsel, Office of Disciplinary Counsel

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Appendix

“K”

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In the Matter of the Amendment
of the

RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

ORDER AMENDING RULE 2.24 OF THE RULES OF THE
SUPREME COURT OF THE STATE OF HAWAII

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rule 2.24 of the Rules of the Supreme Court of the State of Hawaii is amended, effective July 1, 2007, as follows (deleted material is bracketed and stricken; new material is underscored):

2.24. Audit of trust accounts.

(a) When audit may be ordered.

(1) ~~Upon occurrence of any of the following, t~~ The Chairperson may order an audit of any trust accounts maintained by an attorney upon:

~~(1) i~~ An attorney's [F]failure to file the trust account verification required [under authority of] by Rule 1.15 of the Hawaii Rules of Professional Conduct;

~~(2) A trust account check is returned for insufficient funds or for uncollected funds, and cannot be satisfactorily explained;~~

~~(3) ii~~ The filing of [A]a petition for creditor relief [is filed] on behalf of an attorney;

~~(4) iii~~ The filing of [F]felony charges [are filed] against an attorney;

~~(5) iv~~ An allegation an attorney is [alleged to be] incapacitated under Rule 2.19 of these rules, or [has been judicially declared to be incompetent or has been involuntarily committed] a judicial determination the attorney is incompetent or upon involuntary commitment on [the] grounds of incompetency or disability;

~~(6) v~~ The filing of [A]a claim against the attorney [is filed] with the Lawyers' Fund for Client Protection;

~~(7) vi~~ [Upon] [e]Court order; or

~~(8) vii~~ [When] Counsel's request[ed] for other good and sufficient reasons [by Counsel, a hearing committee or officer, or the Board].

(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.

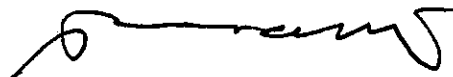
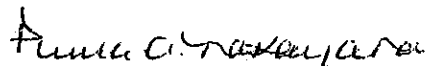
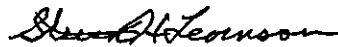
~~[(c) **Examination of other financial accounts.** Nothing in this rule shall preclude the examination of the other financial accounts of an attorney if the examination of the attorney's trust accounts reveals to the satisfaction of the Chairperson that the attorney is not in substantial compliance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

~~[(d) **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.~~

DATED: Honolulu, Hawai'i, October 2, 2007.



Karen E. Dubby, Jr.

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

K. HANAKOHI
CLERK OF THE SUPREME COURT
STATE OF HAWAII

2007 OCT -4 AM 9:46

FILED

AMENDMENT TO
ORDER AMENDING RULE 2.24 OF THE RULES OF THE
SUPREME COURT OF THE STATE OF HAWAII
(By: Moon, C.J., for the court¹)

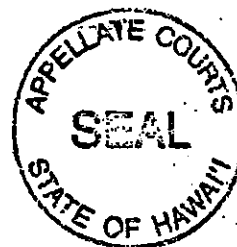
IT IS HEREBY ORDERED that the effective date of the Order Amending Rule 2.24 of the Rules of the Supreme Court of the State of Hawaii, filed on October 2, 2007, is amended to read January 1, 2008, rather than July 1, 2007.

The Clerk of the Court is directed to incorporate the foregoing change in the original order and take all necessary steps to notify the publishing agencies of this change.

DATED: Honolulu, Hawaii, October 4, 2007.

FOR THE COURT:

J. Moon
Chief Justice



¹ Considered by: Moon, C. J., Levinson, Nakayama, Acoba, and Duffy, JJ.