

**HAWAI‘I SUPREME COURT
COMMISSION ON PROFESSIONALISM**

**FOURTH REPORT TO THE
HAWAI‘I SUPREME COURT**

Submitted By:

The Honorable James E. Duffy, Jr., Chair
Susan Arnett

The Honorable Joseph Cardoza
Malcom Chang
Steven Dixon
Lyn Flanigan

The Honorable Daniel Foley
David W. Hall
Janet Hunt
Grace Kido
Gayle Lau

The Honorable Susan Oki Mollway

The Honorable Paula Nakayama
Michael Nauyokas
Nathan Nikaido
Terence O'Toole
Wesley Park
Judith Ann Pavey

The Honorable Karen Radius
Jill Ramsfield

The Honorable Trudy Senda
The Honorable Barbara Takase
Kevin Takata
Calvin Young

June 8, 2009

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

FOURTH REPORT TO THE HAWAI'I SUPREME COURT

June 8, 2009

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 10, 2008 and April 8, 2009 are presented in Appendix "C". It should be noted that another meeting scheduled for January 16, 2009 was cancelled on that date when the Governor ordered nonessential State of Hawai'i workers to stay home due to potentially dangerous weather conditions and the Judiciary subsequently closed Ali'iolani Hale for that day.

V. STATUS REPORT ON PENDING PROJECTS REQUESTED BY THE HAWAI'I SUPREME COURT OR BY COMMISSION MEMBERS

A. Mandatory Continuing Professional Education

The Commission's Committee on Mandatory Continuing Professional Education (co-chairs Judge Dan Foley and Calvin Young, Susan Arnett, Michael Nauyokas, Grace Kido, Lyn Flanigan, David Hall, Judy Pavey, Cori Lau, Hisae Ishii-Chang, Peter Lenhart, and Professor Jill Ramsfield) presented a recommendation to amend the Rules of the Supreme Court of the State of Hawai'i to require mandatory continuing professional education prior to the Commission's October 10, 2008 meeting. After much discussion, the Commission voted (by secret ballot) to approve the recommendation by a 10-5 margin in the October 10, 2008 Commission meeting.

The Commission's recommendation (largely based on the "Alaska rule") was forwarded to the Hawai'i Supreme Court on October 15, 2008. See Appendix "D". The Hawai'i Supreme Court subsequently sent the Commission's recommendation out for public comment, and it is the Commission's understanding that the matter is presently pending with the Hawai'i Supreme Court for final disposition.

B. Mandatory Disclosure of Professional Liability Insurance

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 "E".

The 2009 annual registration statements revealed the following disclosures by attorneys regarding whether they have professional liability insurance:

	<u>Yes</u>	<u>No</u>
Solo practitioners	654	823
Firm of 2-5 attorneys	535	68
Firm of 6-14 attorneys	458	13
Firm of 15 or more	711	27
In-House Counsel	<u>26</u>	<u>310</u>
	2,384	1,241

It should be noted that government attorneys and inactive attorneys are not included in the above numbers.

In the Commission's meeting on April 9, 2009, the Committee recommended that attorneys continue to report to the HSBA whether they have liability insurance and that the HSBA make this information available online to the public. At this time the Committee is not recommending that attorneys be required to disclose in writing to their clients and potential clients if they do not have professional liability insurance. It is anticipated that the Commission will vote on the Committee's recommendation at its next meeting scheduled for October 2, 2009.

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

Committee Chair Judge Trudy Senda is organizing a half-day presentation at the November 12-13, 2009 Judicial Education Conference regarding what judges can do to encourage professionalism. Judge Senda anticipates that the presentation will include a panel discussion, with the panel including, among others, former state circuit court judges, a member of the Judicial Conduct Commission and the Office of Disciplinary Counsel (ODC) as the reporting of lawyers for unprofessional conduct has potential ramification for the judges, including retention issues.

D. Hawai'i State Bar Association (HSBA) Minor Misconduct Program

Lyn Flanigan of the HSBA and Janet Hunt of the ODC are working together to rejuvenate the HSBA Minor Misconduct Program, which allows the ODC to refer lawyers accused of minor misconduct not warranting formal ODC disciplinary proceedings to HSBA mentors for guidance and counseling. Ms. Flanigan and Ms. Hunt also drafted a proposed Hawai'i Supreme Court rule which would provide immunity for the HSBA mentors similar to that provided in Rule 16.7 of the Hawai'i Supreme Court Rules for the HSBA and participants in the Attorneys and Judges Assistance Program. It is anticipated that this proposed rule will be forwarded to the Hawai'i Supreme Court during this upcoming year. It is hoped that the Senior Bar section of the HSBA, which is presently being organized, will provide a pool of mentors for the Minor Misconduct Program. Based upon Ms. Hunt's prior experience as trial counsel for the State Bar of California, it is anticipated that approximately 50 percent of the complaints to the ODC will be eligible for the Minor Misconduct Program, which hopefully will reduce the ODC backlog of cases and allow it to operate more efficiently.

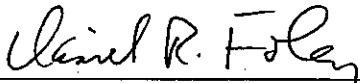
E. Study of Possible Need to Revise Hawai'i Rules of Professional Conduct re "Pro Se" Litigants and "Unbundling of Legal Services" Issue

The Commission Committee chaired by Judge Joseph Cardoza is working with an ongoing Disciplinary Board Committee which is studying revisions to the Rules of Professional Conduct for Hawai'i attorneys, which revisions will include "pro se" litigants and the "unbundling of legal services" issue, now more commonly known as "discrete task representation." It should be noted that revision of our professional rules

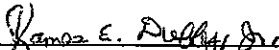
regarding "pro se" litigants and the "unbundling of legal services" are of great interest to the ongoing Hawai'i Access to Justice Commission.

Commission Chair Justice Duffy is very grateful for the hard work of the Commission Members over a period of years which has enabled the Commission to make significant strides in attempting to enhance professionalism among Hawai'i lawyers, as noted in this report and the earlier annual reports.

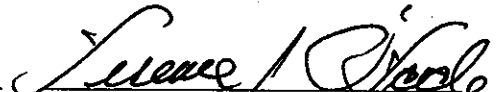
Respectfully submitted this 8 th day of June, 2009.



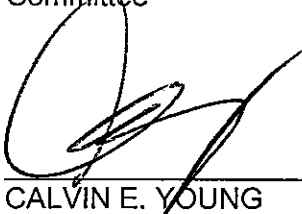
JUDGE DANIEL R. FOLEY
Co-Chair, Continuing
Professional Legal Education
Committee



JUSTICE JAMES E. DUFFY, JR.
Chair, Commission on
Professionalism



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



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



LYN FLANIGAN
HSBA Executive Director



WESLEY PARK
Co-Chair, Committee
on Professional Liability
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

K. HANAKAHOA
CLERK OF THE SUPREME COURT
STATE OF HAWAII

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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

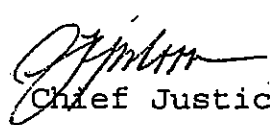
For a term expiring on March 13, 2009

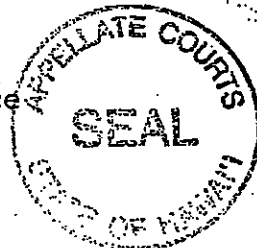
Hon. Joseph Cardoza, Second Judicial Circuit
Hon. Trudy Senda, Fifth Judicial Circuit
Hon. Steven Levinson, Appellate Court
Calvin Young, HSBA
Michael Nauyokas, HSBA
Carol Mon Lee, Richardson School of Law
Carole Richelieu, ODC
Grace Nihei Kido, Board of Bar Examiners
Petra Bray, Public member
Nathan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

MALCOM H.M. CHANG, D.D.S. received his doctor of dental surgery degree from the University of Southern California in 1976 and his bachelor of science in biology degree from the University of Missouri-Kansas City in 1968. Dr. Chang started his own dental practice in 1977. He is currently serving or has served as a member, officer, or board of director of various businesses and organizations, and chaired many committees, including the American Dental Association; Hawaii Dental Association; Hawaii Dental Service; Honolulu County Dental Association; International Academy of Gnathology, American Section; the 50th State Dental Study Club; Waialae Country Club; La Confrerie des Vignerons de Saint Vincent Macon; Bulldog Club of America; Hawaiian Bulldog Club; and Hawaiian Kennel Club. Dr. Chang was also an Eagle Scout in the Boy Scouts of America.

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 Kaimehameha 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.

JANET S. HUNT, ESQ. is the Executive Director of the Office of Disciplinary Counsel. She has served as an Assistant Chief Trial Counsel and as a Supervising Trial Counsel in the Office of the Chief Trial Counsel, Enforcement Division of the State Bar of California for twenty-one years prior to accepting the Executive Directorship with ODC. She practiced as a creditor's rights attorney in bankruptcy court and a general practitioner until she became staff attorney with the State Bar of California in 1987. She is the current administrator for the Lawyers' Fund for Client Protection. She is a member of the National Client Protection Organization. She has served on numerous panels for the National Organization of Bar Counsel and was a member of the Program Committee. She is a member of the American Bar Association.

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.

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.

ASSOCIATE JUSTICE PAULA A. NAKAYAMA is an Associate Justice of the Supreme Court in the State of Hawai'i. She has served on the Supreme Court since 1993. Prior to being appointed to the Supreme Court, she was a trial judge in the Circuit Court of the First Circuit. Justice Nakayama chairs the Committee on the Hawai'i Rules of Appellate Procedure and is the Supreme Court liaison to the Judiciary Education Committee and the CSR Board. She recently chaired the Appellate Review Task Force and has been appointed to chair the Committee on Children in Family Court. She has been cited as Jurist of the Year by Hawai'i Women Lawyers, selected as a Woman of Distinction by Soroptimists International, received the NAPABA Women's Leadership Award and has been invited to speak at the American Bar Association's Meeting of the Young Lawyers' Division and the Kyoto and Osaka Bar Associations. Justice Nakayama received her law degree from the University of California, Hastings College of Law in San Francisco and her Bachelors of Science Degree in Consumer Economics from the University of California at Davis.

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).

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.

JUDGE BARBARA T. TAKASE has been a judge of the District Court of the Third Circuit since 2004. She served as a per diem judge of the District and Family Courts from 1999-2004. Judge Takase received her law degree from the William S. Richardson School of Law and her Bachelor of Arts in Psychology and a Teaching Certificate from the University of Hawaii - Hilo College. Prior to her appointment, she was in private practice, worked as a hearings officer for the Department of Education "Felix" cases, a deputy prosecuting attorney with the Hawaii County Office of the Prosecuting Attorney, and a social worker at various agencies.

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.

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 10, 2008

2:30 p.m. - 4:00 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Judge Joseph Cardoza (via telephone),
Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley,
Gayle Lau, Michael Nauyokas, Nathan Nikaido, Terence O'Toole,
Wesley Park, Judge Karen Radius, Jill Ramsfield, Kevin Takata,
and Calvin Young
Guests: Charles Hite and Janet Hunt

HANDOUTS: (1) Agenda
(2) HSBA Survey re CLE participation and program preference
(3) Pacific Business News article dated October 3, 2008 entitled
"Mandatory continuing education sparks debate among
attorneys"
(4) Rules re Mandatory Continuing Professional Education and
Voluntary Continuing Legal Education proposed by the
Commission's Committee re Mandatory Continuing Legal
Education

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy thanked the Commission members for attending, and related that a number of members were traveling and unable to attend. Justice Duffy further related that the Judiciary has imposed travel restrictions on its employees in view of the present State financial condition, which has and will in the foreseeable future limit the ability of neighbor island Judiciary members to attend Commission and other committee meetings.

Justice Duffy gave a special welcome to guests Charles Hite, Acting Chief Disciplinary Counsel, and Janet Hunt, who was recently selected by the Disciplinary Board to be the new Chief Disciplinary Counsel upon her passing of the Hawai'i Bar in 2009. In the meantime, Ms. Hunt, who has 21 years' experience in working for the California State Bar disciplinary entity, will serve as Executive Director of the Office of Disciplinary Counsel.

II. REPORT RE 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 related (thru e-mail to Justice Duffy) that she was recently informed that the Spring 2009 Judicial Education Conference will be cancelled due to the financial considerations referred to earlier herein. It had been hoped that the Judiciary Education Committee would approve the Committee's presentation at the Spring 2009 conference. Judge Senda will follow up with the Judiciary Education Committee.

III. REPORT RE HSBA MINOR MISCONDUCT PROGRAM

Lyn Flanigan related the efforts she, Steve Dixon, Charles Hite, and Calvin Young have made to reinvigorate the Minor Misconduct Program. While it had been hoped that this program could be tailored to fit within the confidentiality protections provided the Attorneys and Judges Assistance Program (AAP) by Rule 16 of the Rules of the Supreme Court, the AAP's Board has expressed its present concerns that such expansion to include the Minor Misconduct Program would (1) be beyond the traditional scope of the AAP and (2) would significantly increase the workload of the AAP's director, who is already stretched thin. Lyn, Steve, Charles, Calvin, and Janet Hunt are meeting to review the procedures for this program in order to reach a satisfactory resolution. On a positive note, Lyn related that four attorneys have expressed an interest in being Minor Misconduct Program mentors, so we are well on the way to the goal of 10-12 mentors.

IV. REPORT RE SURVEY OF HSBA MEMBERS RE CLE PROGRAMS THE ATTORNEY WOULD LIKE TO SEE OFFERED

Lyn Flanigan reviewed the handout with the results of the HSBA survey re CLE participation and program preference. While the results are self-explanatory, Lyn noted that (1) ethics/professionalism courses ranked high (4 of 40) in program preference, (2) the survey numbers were statistically valid, (3) 2-hour to half-day programs were the most popular, (4) Friday was the preferred day for CLE programs (5) attorneys want program manuals, printed materials, and DVDs (and food!), and (6) 33 % of the survey participants reported that they presently participate in 1-5 hours of CLE annually, with the remaining participants claiming to take in excess of 5 hours CLE annually.

V. REPORT RE COMMITTEE TO REVIEW POSSIBLE NEED TO REVISE HAWAII RULES OF PROFESSIONAL CONDUCT RE *PRO SE* LITIGANTS AND "UNBUNDLING OF LEGAL SERVICES" ISSUE

Judge Cardoza related that the issue previously identified as "unbundling of legal services" is now commonly referred to as "discrete task representation" having evolved from "unbundling" and then "limited scope representation." The issue is a national one, with a wealth of materials now available for review and evaluation. Our Commission committee studying this issue is now a joint committee with an Access to Justice Commission Committee studying the same issue. In addition, Gayle Lau reported that the HSBA committee reviewing possible revision of the Hawai'i Rules of Professional Conduct is also studying this issue, and will have a proposed rule revision for the Disciplinary Board to review in the near future.

VI. REPORT RE MANDATORY CLE RECOMMENDATION

Co-chair Calvin Young of the Committee re Mandatory Continuing Legal Education discussed the Committee's work and proposed rules re Mandatory Continuing Professional Education and Voluntary Continuing Legal Education which were circulated to Commission members by e-mail prior to the meeting. The proposed rules were also distributed as a handout at the meeting. Following Calvin's remarks, Justice Duffy invited remarks in opposition to the Committee's proposed rules. A spirited discussion followed about the pros-cons of the proposed rules. Among the concerns expressed were the following: (1) the additional cost to HSBA members in a bad economy, (2) the 3-hour annual requirement for professionalism/ethics is excessive and onerous, (3) the present in-house training conducted by the Offices of the Public Defender and Prosecuting Attorney may have difficulty in meeting the proposed 3-hour annual requirement for professionalism/ethics, (4) the HSBA is in a conflict position on this issue as the HSBA will ostensibly profit by being the entity which approves the CLE programs for credit and is also one of the entities who sponsor CLE programs, (5) the proposed rules' harshness in administratively suspending a member who does not comply with the proposed new rules, (6) there is no empirical evidence that mandatory CLE will result in the delivery of better legal services, and (7) most responsible attorneys already participate in CLE programs in excess of the requirements of the proposed rules.

Following the discussion, a vote was taken by secret ballot. The results: 10 members in favor of the Committee's proposed rules and 5 against. The Committee's proposed rules will now be forwarded to the Hawai'i Supreme Court as a recommendation of the Commission.

Justice Duffy thanked co-chair Calvin Young and members of the Committee for their diligence and hard work. Members of the committee are: co-chairs Calvin Young, Daniel Foley, and Jill Ramsfield; Susan Arnett, Michael Nauyokas, Grace Kido, Lyn Flanigan, David Hall, Judy Pavey, Cori Lau, Hisae Ishii-Chang, and Peter Lenhart.

VII. REPORT RE MANDATORY DISCLOSURE OF INSURANCE RECOMMENDATION

Co-chair Terry O'Toole of the Committee on Insurance Disclosure related that the Committee will be making a 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.

The Committee's recommendation will be circulated prior to the Commission's next meeting, and it is anticipated that the Commission will vote on this issue at that meeting.

VIII. JUDICIARY TRAVEL RESTRICTIONS

This matter was put on the Agenda at the request of Judge Senda and is discussed earlier herein.

IX. NEW BUSINESS

Lyn Flanigan related that the Access to Justice Commission has received a \$58,850 grant from the Hawai'i Justice Foundation to provide for transportation expenses for judicial members attending meetings of the Access to Justice Commission.

X. NEXT MEETING

The next Commission meeting is scheduled for Friday, January 16, 2009 at 2:30 p.m. in the Supreme Court conference room.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

October 10, 2008

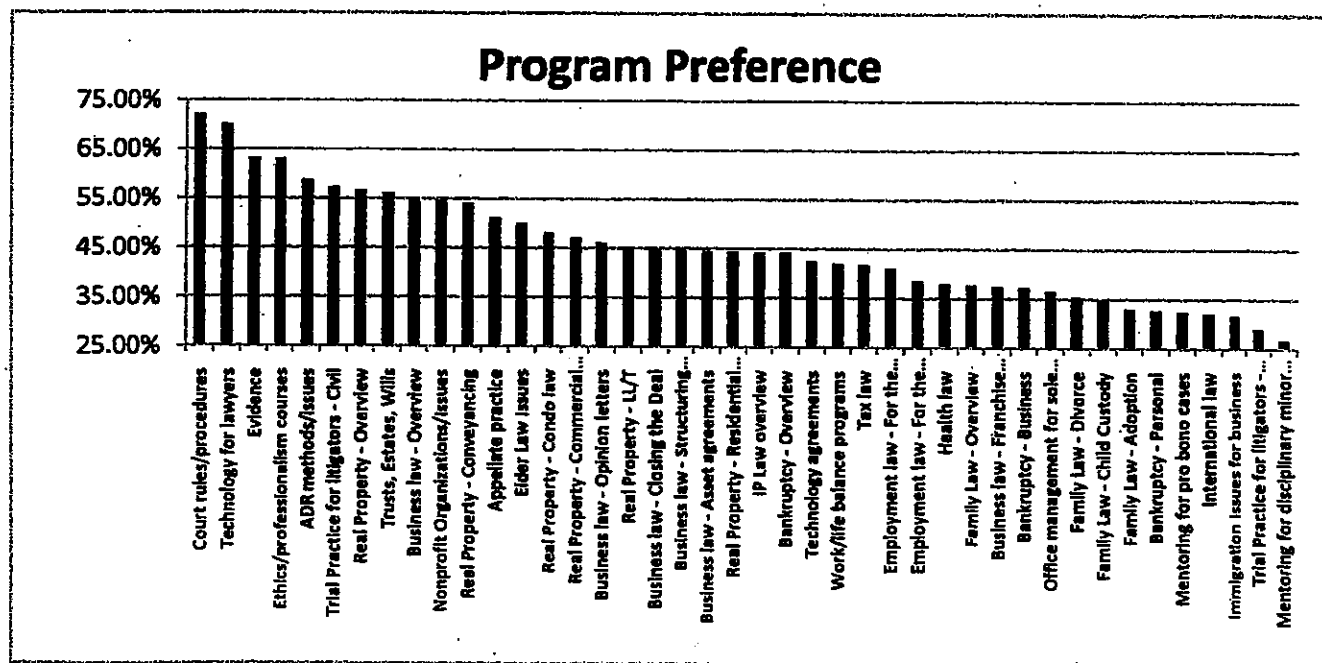
2:30 p.m.

Supreme Court Conference Room

AGENDA

- I. WELCOME AND ANNOUNCEMENTS
- II. REPORT RE 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
- III. REPORT RE HSBA MINOR MISCONDUCT PROGRAM
- IV. REPORT RE SURVEY OF HSBA MEMBERS RE CLE PROGRAMS THE ATTORNEY WOULD LIKE TO SEE OFFERED
- V. REPORT RE COMMITTEE TO REVIEW POSSIBLE NEED TO REVISE HAWAI'I RULES OF PROFESSIONAL CONDUCT RE *PRO SE* LITIGANTS AND "UNBUNDLING OF LEGAL SERVICES" ISSUE
- VI. REPORT RE MANDATORY CLE RECOMMENDATION
- VII. REPORT RE MANDATORY DISCLOSURE OF INSURANCE RECOMMENDATION
- VIII. JUDICIARY TRAVEL RESTRICTIONS
- IX. NEW BUSINESS
- X. NEXT MEETING

CLE Class	Percentage of Actual Voters
Court rules/procedures	72.02%
Technology for lawyers	70.06%
Evidence	63.17%
Ethics/professionalism courses	62.96%
ADR methods/issues	58.75%
Trial Practice for litigators - Civil	57.24%
Real Property - Overview	56.66%
Trusts; Estates, Wills	56.13%
Business law - Overview	55.02%
Nonprofit Organizations/issues	54.73%
Real Property - Conveyancing	54.04%
Appellate practice	51.09%
Elder Law issues	50.00%
Real Property - Condo law	48.07%
Real Property - Commercial development	47.03%
Business law - Opinion letters	46.06%
Real Property - LL/T	45.22%
Business law - Closing the Deal	44.91%
Business law - Structuring complex documents	44.78%
Business law - Asset agreements	44.41%
Real Property - Residential development	44.35%
IP Law overview	44.16%
Bankruptcy - Overview	44.16%
Technology agreements	42.50%
Work/life balance programs	41.82%
Tax law	41.76%
Employment law - For the Employer	41.03%
Employment law - For the practitioner	38.58%
Health law	37.96%
Family Law - Overview	37.77%
Business law - Franchise agreements	37.46%
Bankruptcy - Business	37.33%
Office management for sole practitioners	36.53%
Family Law - Divorce	35.35%
Family Law - Child Custody	34.86%
Family Law - Adoption	32.99%
Bankruptcy - Personal	32.66%
Mentoring for pro bono cases	32.42%
International law	32.09%
Immigration issues for business	31.65%
Trial Practice for litigators - Criminal	29.01%
Mentoring for disciplinary minor misconduct cases	26.71%



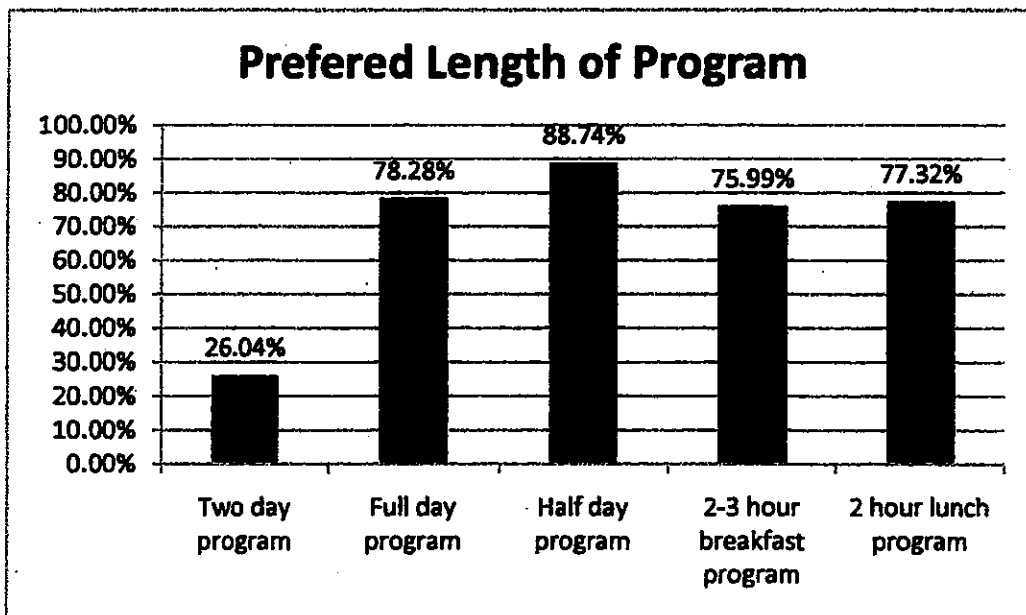
44: Two day program		Two day program	
Question Type	RANK (1 to 5)	number of Votes	Respondents % of Answers
Rank Average	4.06	28	4.32%
No. of Respondents	648	45	6.94%
		83	12.81%
		148	22.84%
		295	45.52%
		Not answered	49
			7.56%
			599
			92.44%
			100.00%

45: Full day program		Full day program	
Question Type	RANK (1 to 5)	number of Votes	Respondents % of Answers
Rank Average	2.53	185	28.55%
No. of Respondents	648	143	22.07%
		155	23.92%
		48	7.41%
		86	13.27%
		Not answered	31
			4.78%
			617
			95.22%
			100.00%

46: Half day program		Half day program	
Question Type	RANK (1 to 5)	number of Votes	Respondents % of Answers
Rank Average	2.1	227	35.03%
No. of Respondents	648	211	32.56%
		106	16.36%
		25	3.86%
		44	6.79%
		Not answered	35
			5.40%
			613
			94.60%
			100.00%

47: 2-3 hour breakfast program		2-3 hour breakfast program	
Question Type	RANK (1 to 5)	number of Votes	Respondents % of Answers
Rank Average	2.45	200	30.86%
No. of Respondents	648	162	25.00%
		97	14.97%
		62	9.57%
		83	12.81%
		Not answered	44
			6.79%
			604
			93.21%
			100.00%

48: 2 hour lunch program		2 hour lunch program	
Question Type	RANK (1 to 5)	number of Votes	Respondents % of Answers
Rank Average	2.41	209	32.25%
No. of Respondents	648	152	23.46%
		106	16.36%
		58	8.95%
		79	12.19%
		Not answered	44
			6.79%
			604
			93.21%
			100.00%



49: Webcast: 2 hour maximum (interactive)

Question Type RANK (1 to 5)
 Rank Average 2.76
 No. of Respondents 648

Webcast: 2 number of Votes Respondents % of Answers
 1 151 23.30% 25.17%
 2 146 22.53% 24.33%
 3 118 18.21% 19.67%
 4 65 10.03% 10.83%
 5 120 18.52% 20.00%
 Not answered 48 7.41%
 600 92.59% 100.00%

50: Podcast: 1 hour maximum

Question Type RANK (1 to 5)
 Rank Average 3.29
 No. of Respondents 648

Podcast: 1 number of Votes Respondents % of Answers
 1 113 17.44% 19.32%
 2 97 14.97% 16.58%
 3 89 13.73% 15.21%
 4 82 12.65% 14.02%
 5 204 31.48% 34.87%
 Not answered 63 9.72%
 585 90.28% 100.00%

51: DVD

Question Type RANK (1 to 5)
 Rank Average 2.79
 No. of Respondents 648

DVD number of Votes Respondents % of Answers
 1 149 22.99% 24.47%
 2 140 21.60% 22.99%
 3 130 20.06% 21.35%
 4 69 10.65% 11.33%
 5 121 18.67% 19.87%
 Not answered 39 6.02%
 609 93.98% 100.00%

52: NI programs with golf option

Question Type RANK (1 to 5)
 Rank Average 4.26
 No. of Respondents 648

NI programs number of Votes Respondents % of Answers
 1 50 7.72% 8.53%
 2 24 3.70% 4.10%
 3 48 7.41% 8.19%
 4 64 9.88% 10.92%
 5 400 61.73% 68.26%
 Not answered 62 9.57%
 586 90.43% 100.00%

53: Travel CLE package - Vegas program

Question Type RANK (1 to 5)
 Rank Average 3.95
 No. of Respondents 648

Travel CLE number of Votes Respondents % of Answers
 1 77 11.88% 12.81%
 2 49 7.56% 8.15%
 3 65 10.03% 10.82%
 4 45 6.94% 7.49%
 5 365 56.33% 60.73%
 Not answered 47 7.25%
 601 92.75% 100.00%

54: Travel CLE package - CLE at Sea: Cruise

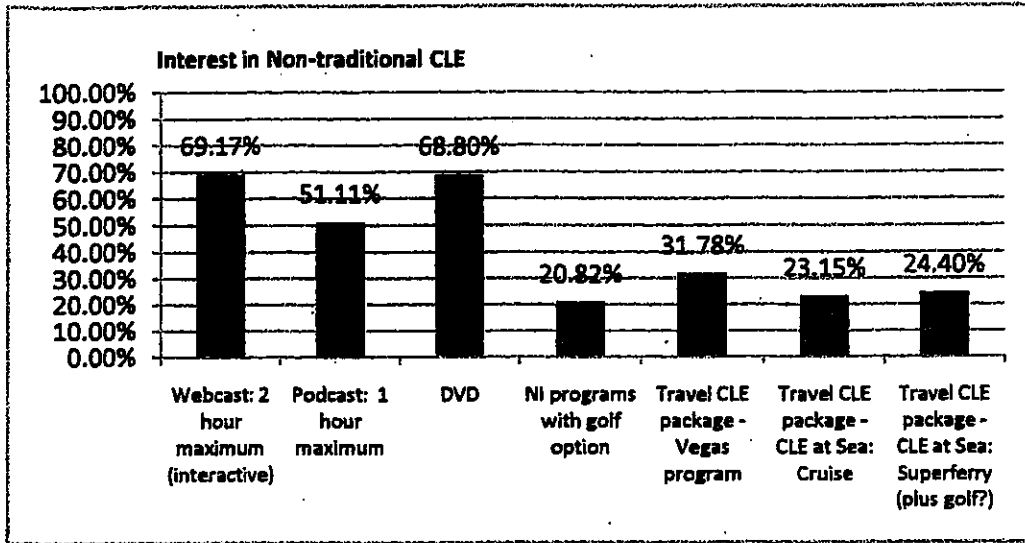
Question Type RANK (1 to 5)
 Rank Average 4.21
 No. of Respondents 648

Travel CLE number of Votes Respondents % of Answers
 1 50 7.72% 8.39%
 2 28 4.32% 4.70%
 3 60 9.26% 10.07%
 4 65 10.03% 10.91%
 5 393 60.65% 65.94%
 Not answered 52 8.02%
 596 91.98% 100.00%

55: Travel CLE package - CLE at Sea: Supperferry (plus golf?)

Question Type RANK (1 to 5)
 Rank Average 4.22
 No. of Respondents 648

Travel CLE number of Votes Respondents % of Answers
 1 44 6.79% 7.51%
 2 26 4.01% 4.44%
 3 73 11.27% 12.46%
 4 59 9.10% 10.07%
 5 384 59.26% 65.53%
 Not answered 62 9.57%
 586 90.43% 100.00%

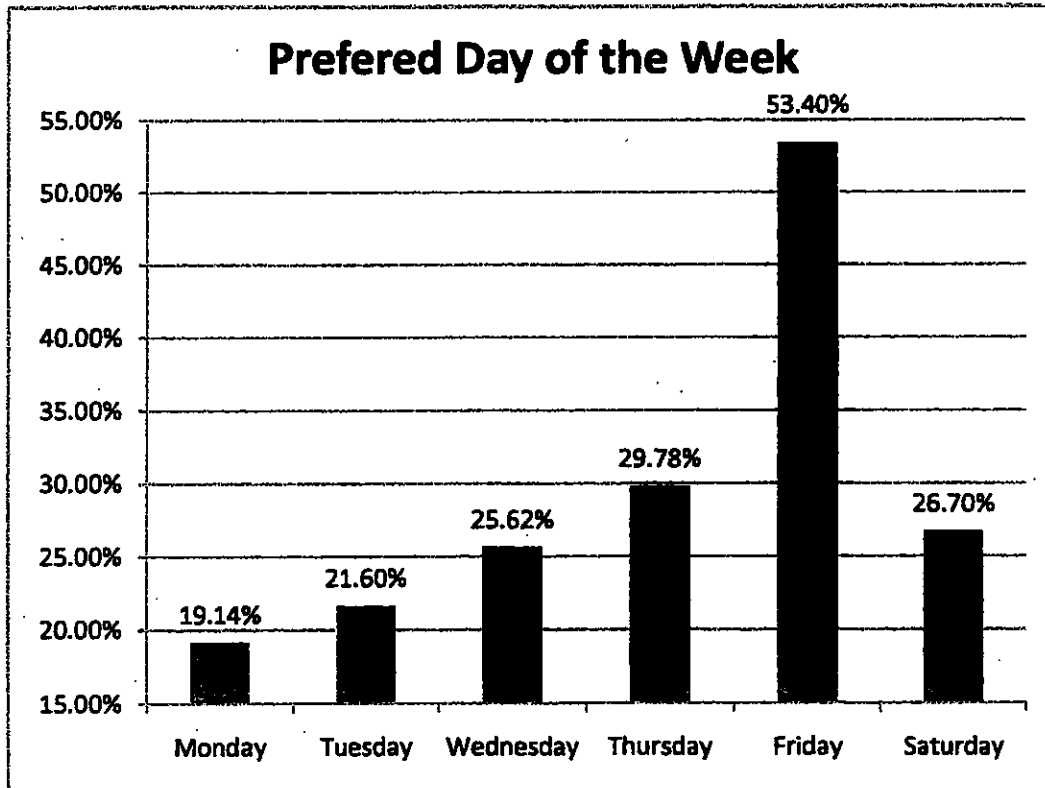


56: Please indicate which day(s) would be best for CLE programming:

Question Type: MULTIPLE
No. of Respondents: 648

Please indicate number of Votes, Respondents % of Answers

Day	Number of Votes	Respondents %	% of Answers
Monday	124	19.14%	10.86%
Tuesday	140	21.60%	12.26%
Wednesday	166	25.62%	14.54%
Thursday	193	29.78%	16.90%
Friday	346	53.40%	30.30%
Saturday	173	26.70%	15.15%
Total	1142		100.00%



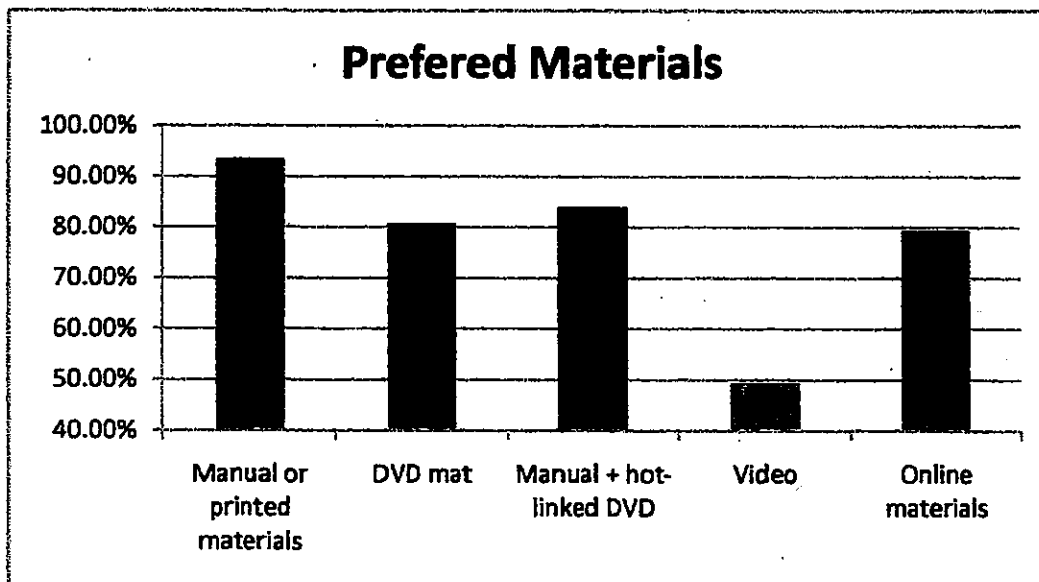
57: Manual or printed materials		Manual or printed	Number of Votes	Respondents	% of Answers
Question Type	RANK (1 to 5)	1	342	52.78%	56.07%
Rank Average	1.73	2	156	24.07%	25.57%
No. of Respondents	648	3	72	11.11%	11.80%
		4	15	2.31%	2.46%
		5	25	3.86%	4.10%
		<i>Not answered</i>	38	5.86%	
			610	94.14%	100.00%

58: DVD mat		DVD	Number of Votes	Respondents	% of Answers
Question Type	RANK (1 to 5)	1	172	26.54%	29.25%
Rank Average	2.41	2	171	26.39%	29.08%
No. of Respondents	648	3	131	20.22%	22.28%
		4	59	9.10%	10.03%
		5	55	8.49%	9.35%
		<i>Not answered</i>	60	9.26%	
			588	90.74%	100.00%

59: Manual + hot-linked DVD		Manual + hot-linked	Number of Votes	Respondents	% of Answers
Question Type	RANK (1 to 5)	1	257	39.66%	44.08%
Rank Average	2.16	2	135	20.83%	23.16%
No. of Respondents	648	3	97	14.97%	16.64%
		4	31	4.78%	5.32%
		5	63	9.72%	10.81%
		<i>Not answered</i>	65	10.03%	
			583	89.97%	100.00%

60: Video		Video	Number of Votes	Respondents	% of Answers
Question Type	RANK (1 to 5)	1	63	9.72%	10.94%
Rank Average	3.43	2	88	13.58%	15.28%
No. of Respondents	648	3	133	20.52%	23.09%
		4	121	18.67%	21.01%
		5	171	26.39%	29.69%
		<i>Not answered</i>	72	11.11%	
			576	88.89%	100.00%

61: Online materials		Online materials	Number of Votes	Respondents	% of Answers
Question Type	RANK (1 to 5)	1	185	28.55%	31.09%
Rank Average	2.41	2	171	26.39%	28.74%
No. of Respondents	648	3	116	17.90%	19.50%
		4	55	8.49%	9.24%
		5	68	10.49%	11.43%
		<i>Not answered</i>	53	8.18%	
			595	91.82%	100.00%



63: Continental breakfast for morning/half-day programs

Question Type RANK (1 to 5)
 Rank Average 2.47
 No. of Respondents 648

Continental	Number of Votes	Respondents % of Answers
1	193	29.78%
2	167	25.77%
3	133	20.52%
4	58	8.95%
5	80	12.35%
Not answered	17	2.62%
	631	97.38%

64: Coffee/tea and snacks

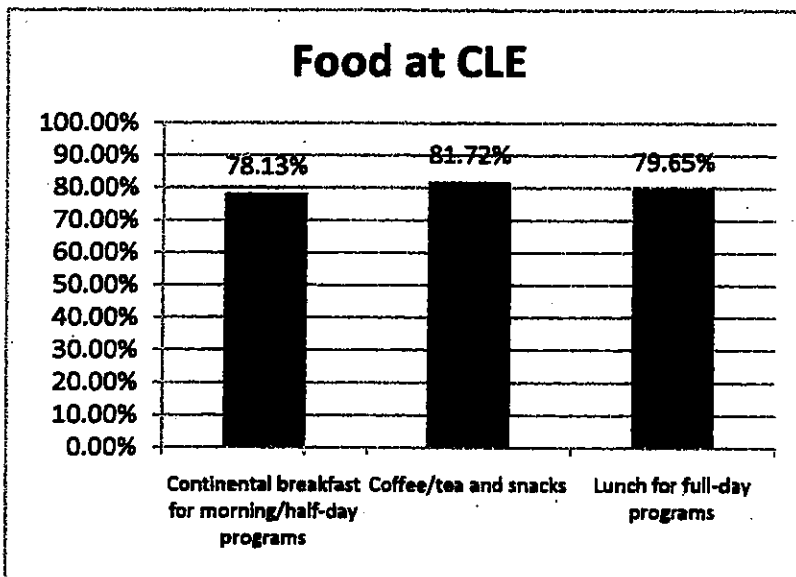
Question Type RANK (1 to 5)
 Rank Average 2.31
 No. of Respondents 648

Coffee/tea	Number of Votes	Respondents % of Answers
1	209	32.25%
2	193	29.78%
3	112	17.28%
4	51	7.87%
5	64	9.88%
Not answered	19	2.93%
	629	97.07%

65: Lunch for full-day programs

Question Type RANK (1 to 5)
 Rank Average 2.32
 No. of Respondents 648

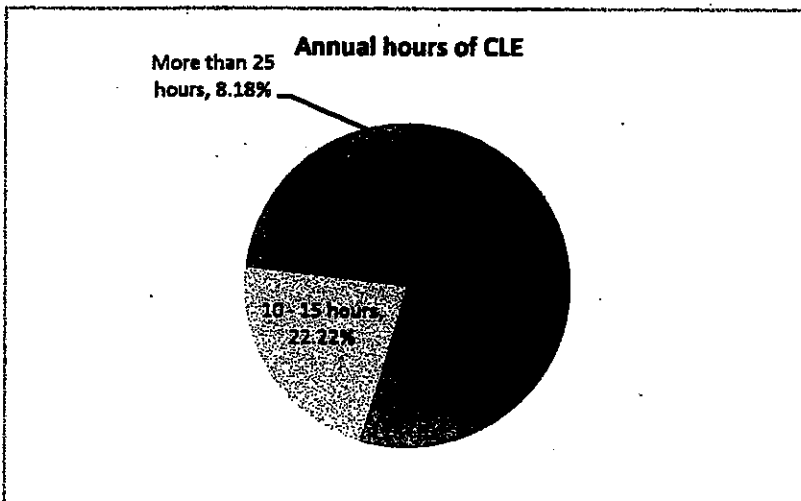
Lunch for full	Number of Votes	Respondents % of Answers
1	245	37.81%
2	145	22.38%
3	115	17.75%
4	57	8.80%
5	72	11.11%
Not answered	14	2.16%
	634	97.84%



67: How many hours of CLE do you normally participate in annually?

Question Type SINGLE
 No. of Respondents 648

How many	Number of Votes	Respondents % of Answers
1 - 5 hours	213	32.87%
5 - 10 hours	141	21.76%
10 - 15 hours	144	22.22%
20 - 25 hours	97	14.97%
More than 25	53	8.18%
	648	100.00%



68: E-mail - Monthly HSBA eCalendar

Question Type RANK (1 to 5)
 Rank Average 2.25
 No. of Respondents 648

E-mail - Number of Votes Respondents % of Answers
 1 235 36.27% 38.71%
 2 143 22.07% 23.56%
 3 130 20.06% 21.42%
 4 42 6.48% 6.92%
 5 57 8.80% 9.39%
 Not answered 41 6.33%
 607 93.67% 100.00%

69: E-mail - Monthly HSBA eNewsletter

Question Type RANK (1 to 5)
 Rank Average 2.12
 No. of Respondents 648

E-mail - Number of Votes Respondents % of Answers
 1 252 38.89% 42.21%
 2 152 23.46% 25.46%
 3 110 16.98% 18.43%
 4 37 5.71% 6.20%
 5 46 7.10% 7.71%
 Not answered 51 7.87%
 597 92.13% 100.00%

70: Specialized CLE emails

Question Type RANK (1 to 5)
 Rank Average 2.16
 No. of Respondents 648

Specialized CLE Number of Votes Respondents % of Answers
 1 241 37.19% 40.71%
 2 159 24.54% 26.86%
 3 103 15.90% 17.40%
 4 36 5.56% 6.08%
 5 53 8.18% 8.95%
 Not answered 56 8.64%
 592 91.36% 100.00%

71: HSBA WEBSITE CLE listings

Question Type RANK (1 to 5)
 Rank Average 3.31
 No. of Respondents 648

HSBA WEBSITE Number of Votes Respondents % of Answers
 1 83 12.81% 14.29%
 2 79 12.19% 13.60%
 3 148 22.84% 25.47%
 4 114 17.59% 19.62%
 5 157 24.23% 27.02%
 Not answered 67 10.34%
 581 89.66% 100.00%

72: Hawaii Bar Journal - HSBA HAPPENINGS

Question Type RANK (1 to 5)
 Rank Average 2.91
 No. of Respondents 648

Hawaii Bar Journal Number of Votes Respondents % of Answers
 1 96 14.81% 16.41%
 2 137 21.14% 23.42%
 3 169 26.08% 28.89%
 4 92 14.20% 15.73%
 5 91 14.04% 15.56%
 Not answered 63 9.72%
 585 90.28% 100.00%

73: Hawaii Bar Journal - Inserts

Question Type RANK (1 to 5)
 Rank Average 3.25
 No. of Respondents 648

Hawaii Bar Journal Number of Votes Respondents % of Answers
 1 75 11.57% 13.07%
 2 99 15.28% 17.25%
 3 145 22.38% 25.26%
 4 115 17.75% 20.03%
 5 140 21.60% 24.39%
 Not answered 74 11.42%
 574 88.58% 100.00%

74: Mailed pamphlets - Specific for each program

Question Type RANK (1 to 5)
 Rank Average 2.89
 No. of Respondents 648

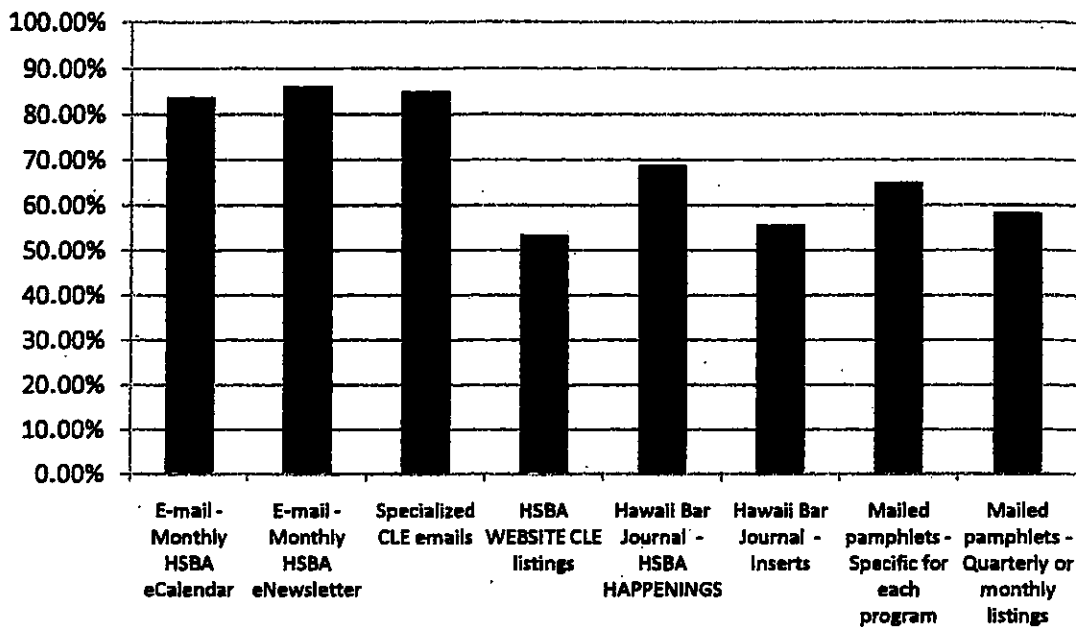
Mailed pamphlets Number of Votes Respondents % of Answers
 1 144 22.22% 24.62%
 2 114 17.59% 19.49%
 3 122 18.83% 20.85%
 4 73 11.27% 12.48%
 5 132 20.37% 22.56%
 Not answered 63 9.72%
 585 90.28% 100.00%

75: Mailed pamphlets - Quarterly or monthly listings

Question Type RANK (1 to 5)
 Rank Average 3.2
 No. of Respondents 648

Mailed pamphlets Number of Votes Respondents % of Answers
 1 91 14.04% 15.77%
 2 98 15.12% 16.98%
 3 147 22.69% 25.48%
 4 88 13.58% 15.25%
 5 153 23.61% 26.52%
 Not answered 71 10.96%
 577 89.04% 100.00%

How members find out about CLE programs



77: Have you ever attended a non-HSBA CLE program?

Question Type: BOOLEAN
No. of Respondents: 648

Have you ever attended a non-HSBA CLE program?

Answer	Number of Votes	Respondents %	% of Answers
Yes	551	85.03%	85.03%
No	97	14.97%	14.97%
Total	648	100.00%	100.00%

Members who attended a non-HSBA CLE programs.



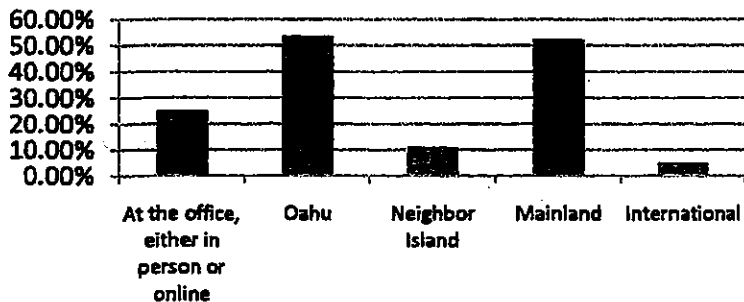
78: If yes, indicate where:

Question Type: MULTIPLE
No. of Respondents: 648

If yes, indicate where:

Location	Number of Votes	Respondents %	% of Answers
At the office, either in person or online	162	25.00%	17.05%
Oahu	347	53.55%	36.53%
Neighbor Island	71	10.96%	7.47%
Mainland	339	52.31%	35.68%
International	31	4.78%	3.26%
Total	950	100.00%	100.00%

Location of non-HSBA CLE

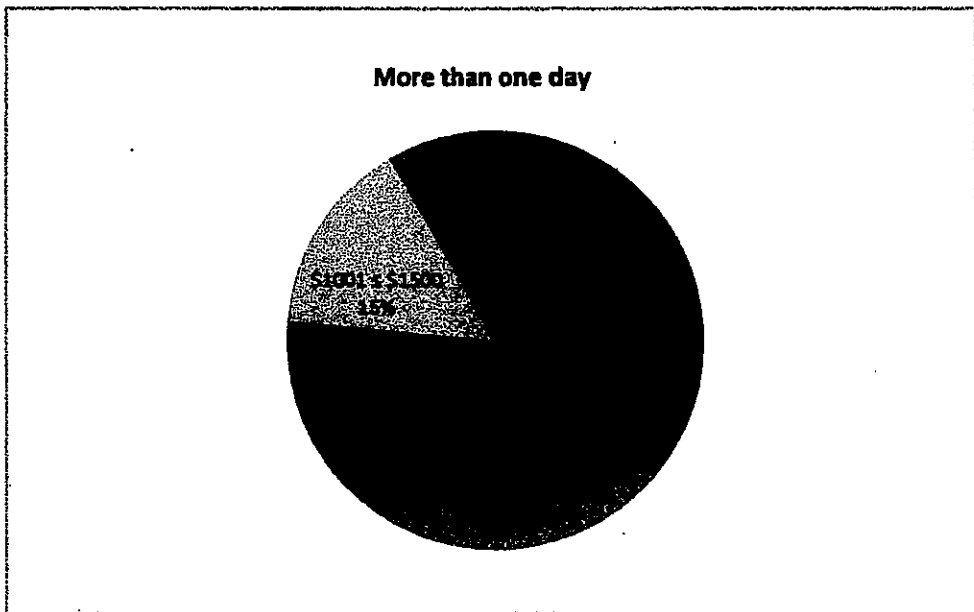
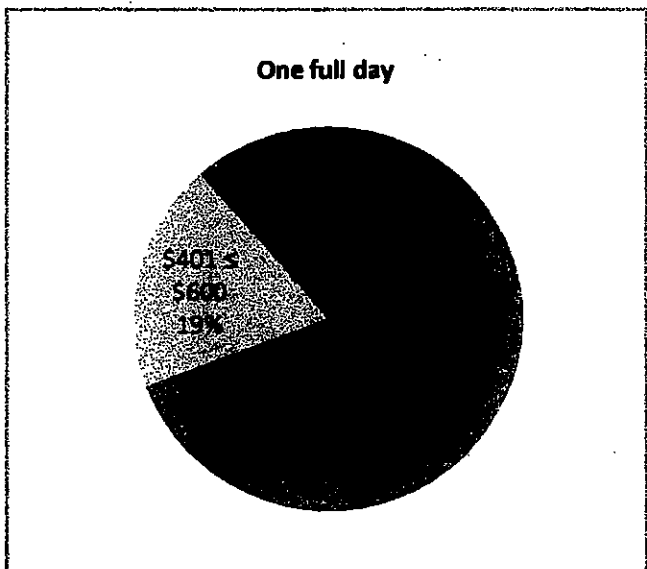
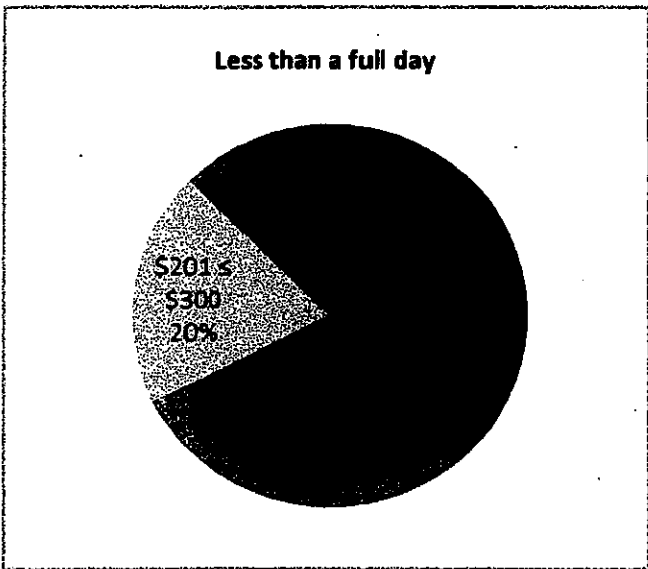


Non HSBA CLE Cost

Less than a full day		Respondents
≤ \$100	36.94%	41
\$101 ≤ \$200	30.63%	34
\$201 ≤ \$300	19.82%	22
> \$300	12.61%	14
Total		111

One full day		Respondents
≤ \$200	14.29%	20
\$201 ≤ \$400	55.00%	77
\$401 ≤ \$600	19.29%	27
> \$600	11.43%	16
Total		140

More than one day		Respondents
≤ \$500	36.36%	48
\$501 ≤ \$1000	40.15%	53
\$1001 ≤ \$1500	15.15%	20
> \$1500	8.33%	11
Total		132

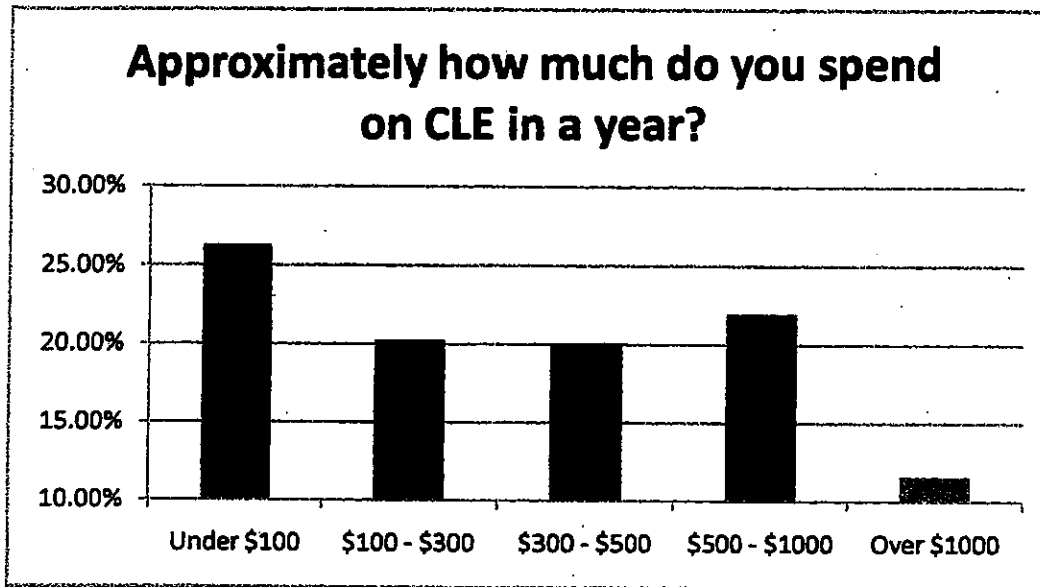


80: 8. Approximately how much do you spend on CLE in a year?

Question Type
No. of Respondents

SINGLE
648

Approximate	Number of Votes	Respondents	% of Answers
Under \$100	170	26.23%	26.23%
\$100 - \$300	131	20.22%	20.22%
\$300 - \$500	130	20.06%	20.06%
\$500 - \$1000	142	21.91%	21.91%
Over \$1000	75	11.57%	11.57%
	648	100.00%	100.00%



Mandatory continuing education sparks debate among attorneys

LAW

BY LINDA CHIEM
PACIFIC BUSINESS NEWS

Continuing legal education would be mandatory for all Hawaii attorneys under a proposal being considered by the Hawaii State Bar Association.

But the volume and frequency of that course work still are being discussed and debated.

Hawaii is one of nine states with no explicit requirement for lawyers to continue taking educational or skills-development courses after they get their law licenses. The only exception is that new lawyers have to take a six-hour professionalism and ethics course within one year of getting their licenses.

Proponents of the additional education note that the state Department of Commerce and Consumer Affairs already requires continuing education for other licensed professionals such as architects, chiropractors, dentists, pharmacists, public accountants, and real estate appraisers and brokers.

Unlike those professions, licensing of lawyers is regulated by the Hawaii Judiciary and the Hawaii State Bar Association.

The proposal is intended to maintain high quality among attorneys who can then deliver better legal services to the community, according to Lyn Flanigan, executive director of the association. Continuing legal education also could help curb cases of legal malpractice or ethics violations, she said.

Hawaii is considering modeling its rules after Alaska's, which went into effect last month. Those rules require active attorneys to take three hours of ethics education in addition to a recommended nine hours of voluntary legal education each year.

Some states have stricter requirements.

California requires 25 hours of continuing legal education over a three-year period that must include four hours of ethics, one hour on substance abuse, and one hour on eliminating bias in the profession.

Hawaii State Bar Association President Jeffrey Sia suggested earlier this year that Hawaii is trailing the rest of the nation and attorneys soon will have to step up and help guide the process to make sure it's not overly burdensome or expensive.

"If the members of the Hawaii bar do not step up to self-regulate in a way that ultimately is satisfactory to the public as a whole and those entities and/or individu-



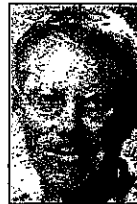
Sia

als with the ability to effect government regulation, there will be those looking to institute regulations to better ensure that members of our bar association meet certain basic requirements," Sia wrote in the February edition of the Hawaii Bar Journal.

Sia said attorneys should be helping to shape the requirements rather than have someone do it for them.

"The alternative of having such a requirement unilaterally instituted with little or no input from the bar membership, or to be blunt, forced down our throats like bitter medicine, is not the way to go, especially if mandatory [continuing legal education] is inevitable," he wrote.

Opponents argue that mandated continuing legal education is not necessary because most responsible attorneys already voluntarily educate themselves. Moreover, they argue that it would be too expensive and the bar association would have to develop a reporting system that makes sure each of its more than 3,000 active members are on track.



Davison

"There's simply not enough to show that it will achieve the aims that it seeks to achieve and there aren't any studies that we have found that mandatory continuing legal education makes for the delivery of better legal services," said Walter C. Davison, a bankruptcy and commercial litigation law partner with Goodsill Anderson Quinn & Stifel.

"There may be things the profession could do to improve legal services but we shouldn't have to squander our resources chasing programs that don't produce benefits," he said. "It doesn't make a lot of sense."

The Hawaii State Bar Association offers online courses and seminars that count toward continuing legal education. The cost is about \$50 per credit. Privately run seminars are offered through companies such as Lorman Education Services and cost about \$300.

The bar association's proposal still needs to be drafted and submitted to the Hawaii Supreme Court's Commission on Professionalism, which would open it up to public comment before any rule changes take effect.



"Calvin Young"
<calvin.young@hawad
vocate.com>

10/07/2008 10:53 AM

To: <James.E.Duffy@courts.state.hi.us>
cc: "Daniel Foley" <daniel.r.foley@courts.state.hi.us>
Subject: Commission on Professionalism/ Draft of proposed rules

Justice James Duffy,

On behalf of the Hawaii Supreme Court's Commission on Professionalism's Committee re Mandatory Continuing Legal Education, we are pleased to forward to you the following.

Attached are proposed rules re Mandatory Continuing Professional Education and Voluntary Continuing Legal Education. Also attached is a brief commentary on the proposed rules from our committee.

<<mcpe.PDF>>

We believe this draft is suitable for distribution to the entire Commission in advance of this coming Friday's meeting for review and consideration.

Our fellow committee members, Susan Arnett, Michael Nauyokas, Grace Kido, Lyn Flanigan, David Hall, Judy Pavey, Cori Lau, Hisae Ishii-Chang, Peter Lenhart and Jill Ramsfield, worked long and hard and we commend their effort. We note that our committee did not reach this juncture without some difference of opinion and we expect that additional discussion will take place on Friday.

Should you have any questions in advance of our meeting, please feel free to contact one of us.

Aloha,

Calvin Young



Judge Daniel Foley mcpe.PDF

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

IT IS HEREBY ORDERED that Rule 1.15 and 1.16 are added to the Rules of the Supreme Court of the State of Hawaii, effective _____, as follows:

Rule 1.15. Mandatory Continuing Professional Education and Voluntary Continuing Legal Education.

(a) Mandatory Continuing Professional Education. In order to promote the highest level of competence and professionalism in members of the Hawaii State Bar Association (HSBA), every active member of the HSBA must complete at least three credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying educational topics may include the Hawaii Rules of Professional Conduct, Revised Code of Judicial Conduct, legal ethics, law office management, case and client management, malpractice insurance and prevention programs, and professionalism.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the HSBA are encouraged to complete up to nine or more credit hours per year of Voluntary Continuing Legal Education (VCLE).

(c) Carry forward of Credit Hours. An active HSBA member may carry forward from the previous reporting period a maximum of 3 MCPE credit hours and 9 VCLE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) Mandatory Reporting. By December 31 of each year, each active HSBA member must certify in a manner prescribed by the HSBA whether the member has completed the required minimum of three credit hours of approved MCPE during the preceding year or carried forward the minimum credit hours from the prior year as provided in subsection (c) of this rule. The member must also certify whether the member has completed nine credit hours or more of VCLE during the preceding year or carried forward VCLE credit hours from the prior year as provided in subsection (c). If the member has completed fewer than nine credit hours of VCLE, the member must also estimate and report the estimated number of VCLE credit hours completed. A member must maintain records of approved MCPE credit hours and of VCLE credit hours for the two most recent reporting periods, and these records shall be subject to audit.

(e) *Time Extensions.* A member may file a written request for an extension of time for compliance with this rule prior to the end of the reporting period. A request for extension shall be reviewed and determined by the HSBA.

(f) *Course and Activities.* The MCPE standard of this rule may be met by attending approved courses or completing any other activity approved for credit hours under these rules. If the approved course or activity or any portion of it relates to professional education as described in (a) of this rule, the member may claim MCPE credit hour(s) for the course or activity or for the professional education related portion of it. The following activities may be considered for credit hours when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved professional courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying approved audio or video tapes or other technology-delivered courses;

(3) attending Bar Section or Inn of Court meetings with approved substantive programs;

(4) attending approved in-house courses;

(5) attending approved continuing judicial education courses;

(6) attending meetings of professional legal associations with approved substantive programs.

(h) Approval of Courses or Activities. Courses and activities sponsored by the HSBA are deemed approved. HSBA shall approve or disapprove all educational courses and activities for credit and shall approve or disapprove applications by an entity or association for accreditation as a course or activity provider. Accreditation shall constitute prior approval of MCPE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. The HSBA will establish by rule the procedures, minimum standards, and any fees for accreditation of providers, in-house courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(i) Effective Date; Reporting Period. This rule will be effective January 1, 200_. The reporting period will be the calendar year, from January 1st to December 31st, and the first reporting period will commence on January 1, 200_.

Rule 1.16. Noncompliance with Mandatory Continuing Professional Education Requirements or Noncompliance with Requirement to Report MCPE and VCLE; Suspension.

(a) *Notice of Noncompliance.* Within 60 days after the deadline for filing the certification described in Rule 1.15(d), HSBA shall send a certified notice of noncompliance to each active member whose certification shows that the MCPE requirement has not been met, or who has failed to file the completed certification information. Within 30 days of the mailing of such notice of noncompliance, the member shall remedy the noncompliance, demonstrate that the notice of noncompliance was issued erroneously, or submit an affidavit of compliance, if the member asserts that the information on the certification form contained an error.

(b) *Suspension for Noncompliance with Mandatory Continuing Professional Education Requirement or Noncompliance with Requirement to Report MCPE and VCLE.*

(1) Any active member who has not complied with the MCPE requirement in Rule 1.15 or with the mandatory reporting of the MCPE and VCLE requirement in Rule 1.15, and who has not

remedied the noncompliance as provided in subsection (a) of this rule, shall be automatically administratively suspended for noncompliance with Rule 1.15.

(2) An active member suspended under this subsection shall not be reinstated until (a) the member has complied with the MCPE requirement and the MCPE and VCLE reporting requirement; (b) the member has paid a reinstatement fee in an amount set by the HSBA; and (c) the member has paid any dues accrued during the period of suspension.

DATED: _____

EFFECTIVE DATE: _____

/s/ _____
Chief Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

Commentary - Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. Voluntary continuing legal education is valuable to lawyers and attendance at courses is encouraged. These new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit, with resulting enhancement of lawyer services to clients.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of April 8, 2009

2:30 p.m. - 3:15 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Judge Joseph Cardoza (via telephone),
Dr. Malcom Chang, Steven Dixon, Lyn Flanigan, Associate Judge
Daniel Foley, David Hall, Janet Hunt, Grace Kido, Gayle Lau,
Judge Susan Mollway, Michael Nauyokas, Terence O'Toole, Wesley
Park, Judge Karen Radius, Jill Ramsfield, Judge Trudy Senda (via
video conference), Judge Barbara Takase (via video conference),
and Calvin Young
Guests: Charles Hite

HANDOUTS: (1) Agenda;
(2) Biographies: (a) Malcom H.M. Chang, D.D.S., (b) Janet S. Hunt,
(c) Associate Justice Paula A. Nakayama, (d) Judge Barbara T.
Takase;
(3) Order of Appointment filed on March 23, 2009;
(4) Letter dated October 15, 2008 from Associate Justice James
Duffy to Chief Justice Ronald T.Y. Moon and Associate Justices
Levinson, Nakayama, and Acoba (with enclosures);
(5) Proposed Rules 1.15 and 1.16 of the Rules of the Supreme
Court of the State of Hawai'i;
(6) Article in the February 2009 Hawaii Bar Journal entitled
"Member Comment Requested on Proposed MCLE Rule";
(7) Letter dated January 14, 2009 from Terence J. O'Toole to
Associate Justice James Duffy;
(8) 2009 Professional Liability Insurance Survey Results; and
(9) HSBA CLE brochure re April 14, 2009 Program "Ethics, Ethics,
Ethics."

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy thanked the members for attending, and gave a special welcome to the Commission's four new members: Justice Paula Nakayama, Judge Barbara Takase (Hilo), Janet Hunt (soon to be the new Chief Disciplinary Counsel), and public member Dr. Malcom Chang.

Justice Duffy also thanked the members who agreed to be reappointed to a new four-year term: Judge Joseph Cardoza, Judge Trudy Senda, Calvin Young, Michael Nauyokas, Professor Jill Ramsfield, Grace Kido, and Nathan Nikaido.

Justice Duffy reported on the status of the Commission's recommendation to the Supreme Court that its draft rule be adopted to require Mandatory Continuing Professional Education:

1. The Commission's recommendation went to the Supreme Court on October 15, 2008;
2. The Supreme Court sent the proposed rule out for public comment, including the bar members. The time for comment expired on February 17, 2009. Only 28 comments were received (less than one percent of the bar members with active licenses). Of the 28 comments, 20 were against the proposed rule, 7 were in favor, and the HSBA as an entity took no position.
3. The Supreme Court is now considering the proposed rule, and has started a dialogue with the HSBA regarding the practical implementation of the rule, such as what role the HSBA will play in offering programs which will qualify as fulfilling the mandatory requirement, whether the HSBA will provide the programs for free as the bar association does in Alaska, or at a reduced rate, and whether the programs will be available on internet access.

II. REPORT RE 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 Senda reported that a half day presentation has been scheduled at the November 12-13 Judicial Education Conference. While the contents of the presentation and the speakers have not yet been finalized, Judge Senda anticipates that the judges will shortly be polled on the issues they would like to address, and that the presentation will include a panel discussion, with the panel including a member of the Judicial Conduct Commission and the Office of Disciplinary Counsel as the reporting of lawyers for unprofessional conduct has potential ramification for the judges, including retention.

III. REPORT RE HSBA MINOR MISCONDUCT PROGRAM

Lyn Flanigan reported that she and Janet Hunt are working together in an effort to rejuvenate the HSBA Minor Misconduct Program, which allows the ODC to refer lawyers accused of minor misconduct not warranting formal ODC disciplinary proceedings to HSBA mentors for guidance and counseling. Lyn and Janet have drafted a proposed Hawai'i Supreme Court rule which would provide immunity for the HSBA mentors similar to that provided in Rule 16.7 of the Hawai'i Supreme Court Rules for the HSBA and participants in the Attorneys and Judges Assistance Program. Lyn further related that the HSBA is organizing a Senior Bar section, and that members of that section may well provide a pool of mentors for the Minor Misconduct Program. Justice Duffy stated that the visiting team from the ABA reviewing the operations of the ODC strongly supports the Minor Misconduct Program. Janet Hunt related that in her prior experience in California, approximately 50 percent of the cases were minor misconduct matters.

IV. REPORT RE 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 the history of this committee and noted that an ongoing Disciplinary Board committee studying revisions to the Rules of Professional Conduct is also working on the issue of unbundling of legal services. Gayle Lau, Janet Hunt, and Charles Hite (who are participating in the Disciplinary Board committee) confirmed that the rule revisions will include the "unbundling" issue, and invited Judge Cardoza and his committee to have input and work with the Disciplinary Board committee on this issue.

V. REPORT RE MANDATORY DISCLOSURE OF INSURANCE RECOMMENDATION

Terry O'Toole related the history of this committee's work, and made the following recommendation: that attorneys report to the HSBA whether they have liability insurance and that the HSBA make this information available online to the public. At this time, Terry related that the committee is not recommending that attorneys be required to disclose in writing to their clients and potential clients if they do not have professional liability insurance. Lyn Flanigan distributed a handout showing the 2009 Professional Liability Insurance Survey Results based on the disclosure made by attorneys in their 2009 annual registration statements. This survey revealed the following:

	<u>Yes</u>	<u>No</u>
Solo	654	823
Firm of 2-5 attorneys	535	68
Firm of 6-14 attorneys	458	13
Firm of 15 or more	711	27
In-House Counsel	<u>26</u>	<u>310</u>
	2,384	1,241

Note: government attorneys and inactive attorneys are not included in the above numbers.

In the ensuing discussion regarding the number of uninsured attorneys, Lyn related that the HSBA is looking at ways to assist attorneys in procuring insurance. Susan Arnett spoke in opposition to the recommendation of the committee, with particular emphasis on the potential effect on the sole practitioner's willingness to provide legal services. Susan stated that more work should be done to determine why more solo practitioners do not have insurance, and once that is determined, the focus should be on making insurance more readily available to the solo practitioners. Justice Duffy related that the Commission would vote on the committee's recommendation at its next meeting.

VI. NEW BUSINESS

Lyn Flanigan distributed an HSBA CLE brochure for an April 14, 2009 Honolulu program entitled "Ethics, Ethics, Ethics." Lyn related that this program would qualify as fulfilling the professional education requirement in the Mandatory CLE proposed rule presently being considered by the Hawai'i Supreme Court. Charles Hite related that this program will focus on conflicts of interest, which issue constitutes the majority of telephone calls he receives. Lyn further related that a similar program drew very well on the Big Island.

VII. NEXT MEETING

October 2, 2009 at 2:30 p.m.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

April 8, 2009

2:30 p.m.

Supreme Court Conference Room

AGENDA

- I. WELCOME AND ANNOUNCEMENTS
- II. REPORT RE 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
- III. REPORT RE HSBA MINOR MISCONDUCT PROGRAM
- IV. REPORT RE COMMITTEE TO REVIEW POSSIBLE NEED TO REVISE HAWAI'I RULES OF PROFESSIONAL CONDUCT RE *PRO SE* LITIGANTS AND "UNBUNDLING OF LEGAL SERVICES" ISSUE
- V. REPORT RE MANDATORY DISCLOSURE OF INSURANCE RECOMMENDATION
- VI. NEW BUSINESS
- VII. NEXT MEETING

MALCOM H.M. CHANG, D.D.S.

4211 Waiialae Ave., Suite 202

Honolulu, Hawaii 96816

Office: (808) 743-0216

Cell: (808) 226-1916

E-mail: malcomchang@yahoo.com

EDUCATION:

University of Southern California, D.D.S., 1976

University of Missouri-Kansas City, B.S., Biology, 1968

Saint Louis School, 1968

EXPERIENCE:

Honolulu Dental Lab, Summer 1969, 1970

Hawaii Dental Lab, Summer 1971

Malcom H.M. Chang D.D.S. Inc., 1977 - present

ORGANIZATIONS:

American Dental Association

Hawaii Dental Association, Exhibit Committee Chair, 1993 - present

Hawaii Dental Service, Board of Directors, 1995-2004, Executive Committee, chaired the Search and Compensation, and Nominating committees

Honolulu County Dental Association

International Academy of Gnathology, American Section, 1975 - present, Board of Directors 1999 - 2008

50th State Dental Study Club, President

ACTIVITIES:

Waiialae Country Club, 1986 - present, Board of Directors, 1999 - 2001, 2005 - 2007, House, Green, Golf and Executive committees

La Confrerie des Vignerons de Saint Vincent Macon, 1993 - present, Past Chancellor and present Chancellor Argentier

Bulldog Club of America

Hawaiian Bulldog Club, Vice President and Nominating Committee Chair, 2003 - present

Hawaiian Kennel Club

Boy Scouts of America, Eagle Scout

JANET S. HUNT

JANET S. HUNT is the Executive Director of the Office of Disciplinary Counsel. She has served as an Assistant Chief Trial Counsel and as a Supervising Trial Counsel in the Office of the Chief Trial Counsel, Enforcement Division of the State Bar of California for twenty-one years prior to accepting the Executive Directorship with ODC. She practiced as a creditor's rights attorney in bankruptcy court and a general practitioner until she became staff attorney with the State Bar of California in 1987. She is the current administrator for the Lawyers' Fund for Client Protection. She is a member of the National Client Protection Organization. She has served on numerous panels for the National Organization of Bar Counsel and was a member of the Program Committee. She is a member of the American Bar Association.

ASSOCIATE JUSTICE PAULA A. NAKAYAMA

Justice Nakayama is an Associate Justice of the Supreme Court in the State of Hawai'i. She has served on the Supreme Court since 1993. Prior to being appointed to the Supreme Court, she was a trial judge in the Circuit Court of the First Circuit. Justice Nakayama chairs the Committee on the Hawai'i Rules of Appellate Procedure and is the Supreme Court liaison to the Judiciary Education Committee and the CSR Board. She recently chaired the Appellate Review Task Force and has been appointed to chair the Committee on Children in Family Court. She has been cited as Jurist of the Year by Hawai'i Women Lawyers, selected as a Woman of Distinction by Soroptimists International, received the NAPABA Women's Leadership Award and has been invited to speak at the American Bar Association's Meeting of the Young Lawyers' Division and the Kyoto and Osaka Bar Associations. Justice Nakayama received her law degree from the University of California, Hastings College of Law in San Francisco and her Bachelors of Science Degree in Consumer Economics from the University of California at Davis.

Barbara T. Takase
Biographical Information

Education:

University of Hawaii–Hilo College 1971-1976
Bachelor of Arts in Psychology and Teaching Certificate

William S. Richardson School of Law 1986-1989
Juris Doctor 1989

Employment:

Hawaii Intake Service Center 1976-1980
Hawaii State Employment Service 1980-1982
Hawaii County Office of the Prosecuting Attorney 1982-1986
(Social worker at various agencies from 1976 to 1986)

Hawaii County Office of the Prosecuting Attorney 1989-1998
Deputy Prosecuting Attorney

Attorney in Private Practice 1998-2004
Hearings Officer for Department of Education "Felix" cases 1998-1999
Per Diem Judge of the District and Family Court 1999-2004

District Judge of the Third Circuit 2004-Present

In the Matter of the Appointment
of the Members of the

HAWAII SUPREME COURT'S
COMMISSION ON PROFESSIONALISM

FILED
2009 MAR 23 AM 8:58
CLERK, APPELLATE COURTS
STATE OF HAWAII

ORDER OF APPOINTMENT

(By: Moon, C.J., for the court¹)

IT IS HEREBY ORDERED that the following individuals are reappointed as members of the Commission on Professionalism ("the Commission"), for a term of four years, effective nunc pro tunc March 14, 2009 and expiring on March 13, 2013:

Honorable Joseph Cardoza	Second Circuit
Honorable Trudy Senda	Fifth Circuit
Calvin Young	HSBA
Michael Nauyokas	HSBA
Jill Ramsfield	William S. Richardson School of Law
Grace Nihei Kido	Board of Bar Examiners
Nathan Nikaido	Public Member

IT IS FURTHER ORDERED that the Honorable Paula Nakayama is appointed to the Commission on behalf of the Appellate Courts, replacing the Honorable Steven H. Levinson, effective immediately upon the filing of this order and expiring on March 13, 2013.


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

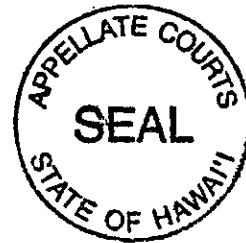
IT IS ALSO FURTHER ORDERED that **Janet Hunt** is appointed to the Commission on behalf of the Office of Disciplinary Counsel, replacing Carole Richelieu, effective immediately upon the filing of this order and expiring on March 13, 2013.

IT IS ALSO FURTHER ORDERED that **Malcolm H.M. Chang, DDS** is appointed to the Commission as a public member, replacing Petra Bray, effective immediately upon the filing of this order and expiring on March 13, 2013.

IT IS FINALLY ORDERED that the **Honorable Barbara Takase** is appointed to the Commission on behalf of the Third Circuit Court, replacing the Honorable Terence T. Yoshioka, effective immediately upon the filing of this order and expiring on March 13, 2011.

DATED: Honolulu, Hawai'i, March 23, 2009.


Chief Justice



Proposed Rules 1.15 and 1.16 of the Rules of the Supreme Court of the State of Hawai'i

The Supreme Court of Hawai'i seeks public comment regarding proposed new Rules 1.15 and 1.16 of the Rules of the Supreme Court of the State of Hawai'i. The proposals would add (1) mandatory and voluntary continuing professional education requirements and (2) noncompliance rules to the Rules of the Supreme Court of the State of Hawai'i. The proposed rules are attached hereto, along with Justice Duffy's cover letter and attachment. Please post the proposed rules, cover letter and attachment together.

Comments about the proposed rule should be submitted, in writing, **no later than Tuesday, February 17, 2009**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the online form on the Judiciary's website at www.courts.state.hi.us. If adopted, the proposed amendment will be effective July 1, 2009.

Attachment

Member Comment Requested On Proposed MCLE Rule

The Supreme Court has posted a proposed Mandatory Continuing Legal Education Rule, with comments requested by February 17, 2009. The rule is posted on the Judiciary website and on the HSBA website, with commentary and articles about the proposed rule. The rule would require 3 credits of ethics/professionalism education per year and recommends up to 9 or more credits of general continuing legal education per year. Members would be required to report annually: (1) whether they completed the three credits of ethics/professionalism education; and (2) how many credits, if any, of general continuing legal education were completed. The rule contains a one-year carryover period that would allow members to carryover for credit in a subsequent year a "surplus" taken in any year.

The rule also contains provisions for curing noncompliance.

This rule is similar to the MCLE rule recently implemented by the Alaska State Bar, is less restrictive and "member-friendly" while still requiring that members actively seek to maintain and update their skills. The HSBA is working to provide CLE programs both in-person and on-line to assist members in complying with the rule if it is implemented for 2010.

Research compiled in studying and developing this rule reveals that 44 (and possibly more now) states have MCLE requirements, some as many as 25 each two-year cycle. In addition, without exception, all professionals licensed in Hawaii are required to complete a certain number of continuing education credits annually.

HSBA Hosts Delegation From The Tokyo Dai Ichi Bar Association

In 2005, the HSBA and the Tokyo Dai Ichi Bar Association (TDIBA) entered into a Friendship Agreement, pledging to develop and present mutually beneficial programs and activities. A delegation from Tokyo



and a delegation from the Mongolian Bar Association attended the 2005 HSBA Bar Convention. And in 2007, a delegation of HSBA members traveled to Tokyo to present seminars to TDIBA members on the jury system in the United States and in Hawaii.

planning and coordination for the TDIBA's visit should contact Richard Turbin at 528-4000.

Court Posts Revised UPL Rule

The revised UPL Rule has been posted for comment by April 27, 2009 by the Supreme Court. Check the HSBA website for the rule.

Judicial Appointments

On January 2, 2009, Governor Linda Lingle appointed Rom A. Trader, a long-time deputy prosecuting attorney with the City and County of Honolulu, to the Circuit Court of the First Circuit. In accordance with its Constitution and Board policies, the HSBA Board reviewed comment from members and references on Trader and submitted written and oral testimony to the Senate Judiciary Committee. (Picture

of Rom at hearing confirmation hearing before the Senate Judiciary Committee) The full Senate confirmed the appointment on January 23, 2009.

Governor Lingle has announced the list of names forwarded to her by the Judicial Section Commission for the vacancy caused by the retirement of Hawaii Supreme Court Associate Justice Steven Levinson. The Governor's press release with information about the candidates and the deadline for comments can be found on the HSBA website.

Vacancy On Board Of Certified Shorthand Reporters

The Board of Certified Shorthand Reporters will have a term expiring on its board. General qualifications for this position include: affirmative interest in the organization; willing and able to devote time to perform necessary duties; conscientious, studious, thorough, and diligent in learning methods and problems of the organization.

Duties: examine applicants for certification as Hawaii certified shorthand reporters and propose rules and regulations for (1) testing, licensing, and supervision of certified shorthand reporters, (2) standards governing conduct of Hawaii certified shorthand reporters, and (3) discipline, censure, suspension or revocation of certification. One



and a delegation from the Mongolian Bar Association attended the 2005 HSBA Bar Convention. And in 2007, a delegation of HSBA members traveled to Tokyo to present seminars to TDIBA members on the jury system in the United States and in Hawaii.

During the first week of March 2009, HSBA and the HSBA International Law and Business Law Sections will host programs with TDIBA. HSBA members interested in attending these programs and/or assisting with the

STARN · O'TOOLE · MARCUS & FISHER

A LAW CORPORATION

January 14, 2009

VIA FACSIMILE

Associate Justice James E. Duffy, Jr.
Supreme Court of Hawaii
417 South King Street
Honolulu, HI 96813

Re: Commission on Professionalism

Dear Justice Duffy:

This will confirm that our committee has recommended and will recommend at the January 16, 2009 Commission meeting that attorneys disclose in their registration statement whether they have professional liability insurance in accordance with the currently published rule and that clients/potential clients have internet access to the attorney's disclosure concerning disclosure.

At this time, the committee is not recommending that the rules of professional conduct be revised to require attorneys to disclose in writing to their clients/potential clients if they do not have professional liability insurance. Wesley Park and I look forward to meeting with you and the Commission on January 16.

Best regards,



Terence J. O'Toole

TJO:saa

2009 Professional Liability Insurance Survey Results

Status - Active Membership Status

Structure of Practice	Yes	No
Solo	654	823
firm of 2-5 Attorneys	535	68
firm of 6-14 Attorneys	458	13
firm of 15 or more	711	27
In-House Counsel	26	310
	2,384	1,241

HSBA | CLE

Hawaii State Bar Association *Celebrating 110 Years of Service!*

Ethics, Ethics, Ethics

April 14, 2009 YWCA at 1040 Richards Street

AGENDA

- 8:30 a.m. General Ethics Session
- Conflicts of Interest
 - Minor Misconduct
 - Changes to the Disciplinary Complaint Processing Procedure
- 10:00 a.m. Break
- 10:15 a.m. Continuation of General Session
- 11:45 a.m. Break
- 12:00 Noon Ethics for Employment Lawyers
- 1:00 p.m. Break
- 1:15 p.m. Ethics for Business Lawyers

ETHICS

Take advantage of 3 hours of Ethics, covering conflicts of interest, identifying and processing of minor misconduct cases, and the changes made to the disciplinary complaint processing procedure. Learn valuable prevention tips from knowledgeable attorneys:

- **James Kawachika**, former Chairperson of the Disciplinary Board of the Hawaii Supreme Court 1991-1997.
- **Charles Hite**, Acting Chief Disciplinary Counsel.
- **James Bickerton**, a member of the Hawaii Chief Justice's Committee on the Adoption of the ABA Model Rules of Professional Conduct.

ETHICS FOR BUSINESS LAWYERS

Take advantage of an hour of Ethics, dealing with specific issues concerning business law. Learn from prominent attorney **Steven Egesdal**, Chairperson of the Business Law Section of the Hawaii State Bar Association and a partner at Carlsmith Ball LLP.

ETHICS FOR EMPLOYMENT LAWYERS

Take advantage of an hour of Ethics, dealing with specific issues concerning employment law. Learn from prominent attorney **Tamara Gerrard**, Chairperson of the Labor and Employment Section of the Hawaii State Bar Association and a director with Torkildson Katz Moore & Hetherington.

Ethics, Ethics, Ethics CLE Registration

Print Full Name _____ Firm _____

Address _____ Phone _____

J.D. Number _____ Email Address _____

Signature _____

PAYMENT TYPE: Check Visa Mastercard Credit Card Number _____ Expiration Date _____

(Make check payable to the HAWAII STATE BAR ASSOCIATION)

Print Card Holder's Name _____ Card Holder Signature _____

TOTAL PAYMENT ENCLOSED \$ _____

Please indicate which session you will be attending:

- \$75 All Sessions/Full Day | \$50 General Ethics Session Only
 \$30 Ethics for Business Session Only | \$30 Ethics for Employment Session Only

Please bring your own brown bag lunch.
Validated parking is unavailable.

Hawaii State Bar Association
1132 Bishop St., Ste. 906
Honolulu, HI 96813

Phone: (808) 537-1868
Fax: (808) 521-7936
Email: info@hsba.org
www.hsba.org



Speaker Bios and Terms and Conditions

James A. Kawachika

James A. Kawachika is a partner in the law firm of O'Connor, Playdon & Guben LLP, where his practice includes advising lawyers and law firms on legal ethics matters and representing lawyers before the Disciplinary Board of the Hawaii Supreme Court. He also serves as an expert witness in legal ethics. Mr. Kawachika is a former chair of the Disciplinary Board and a past president of the Hawaii State Bar Association. He is currently one of Hawaii's delegates to the ABA House of Delegates and was selected by the ABA President to serve a three-year term on the ABA Standing Committee on Ethics and Professional Responsibility, which analyzes and issues formal opinions interpreting the ABA Model Rules of Professional Conduct. Mr. Kawachika has presented numerous legal ethics seminars for both private CLE providers and the HSBA as well as individual organizations. He earned his B.A. degree from the University of Hawaii and his J.D. degree from Boalt Hall School of Law, University of California at Berkeley. Mr. Kawachika is a member of the Hawaii State Bar Association, American Bar Association, American Bar Association Center for Professional Responsibility, and the American Judicature Society. He is president of the Hawaii Justice Foundation and a director of the Hawaii Chapter of the American Judicature Society. Mr. Kawachika is "AV"-rated by the Martindale-Hubbell Law Directory and is listed in "The Best Lawyers in America" by Woodward/White.

James Bickerton

Jim currently represents a wide range of plaintiff and defendant clients in commercial and real estate litigation, consumer class actions, professional liability of attorneys, accountants, and real estate brokers, medical malpractice, serious personal injury and wrongful death, and First Amendment and defamation issues. In addition to his trial practice, Jim is a past Director of the Hawaii State Bar Association, past Governor of the Consumer Lawyers of Hawaii, a member of the Hawaii Chief Justice's Committee on the Adoption of the ABA Model Rules of Professional Conduct, chair of the Hawaii State Bar Association's Special Committee on Appellate Issues and most recently was elected by the Bar to the Judicial Selection Commission. He has tried five civil jury trials in the past 18 months.

Steven Egesdal

Steve Egesdal practices in the area of business structure and operations. Since joining Carlsmith Ball LLP in 1988, he has assisted a wide variety of business entities in the formation, acquisition, operation, reorganization, and dissolution of corporations, partnerships, limited liability companies, and limited liability partnerships. He also has extensive litigation experience he can draw on in advising business entities and drafting documents to reduce the risk of litigation.

Charles Hite

Charles Hite has been with the Office of Disciplinary Counsel since July 1995, is currently Acting Chief Disciplinary Counsel, and has made numerous presentations on legal ethics.

Tamara Gerrard

Tamara Gerrard is a director with the law firm Torkildson Katz Moore & Hetherington where she represents management in all areas of employment law, emphasizing the defense of claims for sexual harassment, wrongful termination and employment discrimination. Ms. Gerrard conducts training, drafts policies, and counsels employers regarding their compliance obligations. She frequently speaks on employers' obligations under the FLSA, USERRA, FMLA, ADA, and Hawaii employment laws. She serves as the Chair of the Labor & Employment Section of the HSBA and is a member of the Society of Human Resource Managers. Ms. Gerrard received her B.A. with distinction from the University of California at Berkeley and received her J.D. degree, magna cum laude, from Hastings College of the Law where she was a member of the Hastings Law Journal and the Thurston Honor Society and was elected to the Order of the Coif.

Terms and Conditions

No Validated Parking: Parking is unavailable at facility.

Cancellation: A refund will be made if we receive written notice of cancellation five business days before the seminar; however, \$15 will be deducted to cover administrative costs. Twenty dollars (\$20) will be charged for insufficient funds.

CLE Credit: As of December 10, 2008, the Hawaii State Bar Association (HSBA) is a State Bar of California approved MCLE provider; however, the renewal of provider status is pending for 2009. Subject to the renewal of provider status for 2009, the HSBA certifies that the seminar has been approved for MCLE credit by the State Bar of California for 3 credit hours for the General Session, for one credit hour for the Ethics for Business Lawyer Session, and for one credit hour for the Ethics for Employment Lawyers Session.

Questions/Special Accommodations: Contact Lisa Tsukayama at (808) 792-7333 and at ltsukayama@hsba.org.

Mail or Fax registration: Fax: (808) 521-7936 or mail to Hawaii State Bar Association, 1132 Bishop St., Suite 906, Honolulu, HI 96813. Attention: Lisa Tsukayama.

Other Provisions: The HSBA reserves the right to cancel the seminar without liability, and in such a situation, will return the amounts paid to the registrant. The seminar will be videotaped and/or photographed, and your registration constitutes your voluntary consent to such videotaping and/or photography and the use thereof without monetary compensation. The representations made in the seminar and content/materials are those of the presenters and do not represent the position of the HSBA. Legal opinions, analyses, and materials provided by the presenters are not reviewed by the HSBA and are not a substitute for independent legal research.

Appendix

“D”



Supreme Court — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • ALI'ĪOLANI HALE • HONOLULU, HAWAII 96813-2912 • TELEPHONE (808) 539-4715 • FAX 539-4703

James E. Duffy, Jr.
ASSOCIATE JUSTICE

October 15, 2008

The Honorable Ronald T. Y. Moon
The Honorable Steven H. Levinson
The Honorable Paula A. Nakayama
The Honorable Simeon R. Acoba
Supreme Court of Hawai'i
417 South King Street
Honolulu, Hawai'i 96813

Dear Members of the Hawai'i Supreme Court:

On behalf of the Hawai'i Supreme Court Commission on Professionalism, I am forwarding the Professionalism Commission's recommendation that the Rules of the Supreme Court of the State of Hawai'i be amended to include the following rules:

1. a rule entitled "Mandatory Continuing Professional Education and Voluntary Continuing Legal Education," and
2. a rule entitled "Noncompliance with Mandatory Continuing Professional Education Requirements or Noncompliance with Requirement to Report MCPE and VCLE; Suspension."

Copies of the recommended rules are enclosed, together with a copy of an e-mail cover letter received from Calvin Young (co-chair of the Professionalism Commission's Committee re Mandatory Legal Education) on October 7, 2008.

The recommended rules were discussed, voted upon (by secret ballot), and passed (by a 10-5 margin) in the Professionalism Commission's meeting on October 10, 2008.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "James E. Duffy, Jr.".

JAMES E. DUFFY, JR.
Associate Justice

JED:jtm
Enclosure



"Calvin Young"
<calvin.young@hawad
vocate.com>

10/07/2008 10:53 AM

To: <James.E.Duffy@courts.state.hi.us>
cc: "Daniel Foley" <daniel.r.foley@courts.state.hi.us>
Subject: Commission on Professionalism/ Draft of proposed rules

Justice James Duffy,

On behalf of the Hawaii Supreme Court's Commission on Professionalism's Committee re Mandatory Continuing Legal Education, we are pleased to forward to you the following.

Attached are proposed rules re Mandatory Continuing Professional Education and Voluntary Continuing Legal Education. Also attached is a brief commentary on the proposed rules from our committee.

<<mcpe.PDF>>

We believe this draft is suitable for distribution to the entire Commission in advance of this coming Friday's meeting for review and consideration.

Our fellow committee members, Susan Arnett, Michael Nauyokas, Grace Kido, Lyn Flanigan, David Hall, Judy Pavey, Cori Lau, Hisae Ishii-Chang, Peter Lenhart and Jill Ramsfield, worked long and hard and we commend their effort. We note that our committee did not reach this juncture without some difference of opinion and we expect that additional discussion will take place on Friday.

Should you have any questions in advance of our meeting, please feel free to contact one of us.

Aloha,

Calvin Young



Judge Daniel Foley mcpe.PDF

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

IT IS HEREBY ORDERED that Rule 1.15 and 1.16 are added to the Rules of the Supreme Court of the State of Hawaii, effective _____, as follows:

Rule 1.15. Mandatory Continuing Professional Education and Voluntary Continuing Legal Education.

(a) Mandatory Continuing Professional Education. In order to promote the highest level of competence and professionalism in members of the Hawaii State Bar Association (HSBA), every active member of the HSBA must complete at least three credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying educational topics may include the Hawaii Rules of Professional Conduct, Revised Code of Judicial Conduct, legal ethics, law office management, case and client management, malpractice insurance and prevention programs, and professionalism.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the HSBA are encouraged to complete up to nine or more credit hours per year of Voluntary Continuing Legal Education (VCLE).

(c) *Carry forward of Credit Hours.* An active HSBA member may carry forward from the previous reporting period a maximum of 3 MCPE credit hours and 9 VCLE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) *Mandatory Reporting.* By December 31 of each year, each active HSBA member must certify in a manner prescribed by the HSBA whether the member has completed the required minimum of three credit hours of approved MCPE during the preceding year or carried forward the minimum credit hours from the prior year as provided in subsection (c) of this rule. The member must also certify whether the member has completed nine credit hours or more of VCLE during the preceding year or carried forward VCLE credit hours from the prior year as provided in subsection (c). If the member has completed fewer than nine credit hours of VCLE, the member must also estimate and report the estimated number of VCLE credit hours completed. A member must maintain records of approved MCPE credit hours and of VCLE credit hours for the two most recent reporting periods, and these records shall be subject to audit.

(e) *Time Extensions.* A member may file a written request for an extension of time for compliance with this rule prior to the end of the reporting period. A request for extension shall be reviewed and determined by the HSBA.

(f) *Course and Activities.* The MCPE standard of this rule may be met by attending approved courses or completing any other activity approved for credit hours under these rules. If the approved course or activity or any portion of it relates to professional education as described in (a) of this rule, the member may claim MCPE credit hour(s) for the course or activity or for the professional education related portion of it. The following activities may be considered for credit hours when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved professional courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying approved audio or video tapes or other technology-delivered courses;

(3) attending Bar Section or Inn of Court meetings with approved substantive programs;

(4) attending approved in-house courses;

(5) attending approved continuing judicial education courses;

(6) attending meetings of professional legal associations with approved substantive programs.

(h) Approval of Courses or Activities. Courses and activities sponsored by the HSBA are deemed approved. HSBA shall approve or disapprove all educational courses and activities for credit and shall approve or disapprove applications by an entity or association for accreditation as a course or activity provider. Accreditation shall constitute prior approval of MCPE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. The HSBA will establish by rule the procedures, minimum standards, and any fees for accreditation of providers, in-house courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(i) Effective Date; Reporting Period. This rule will be effective January 1, 200_. The reporting period will be the calendar year, from January 1st to December 31st, and the first reporting period will commence on January 1, 200_.

Rule 1.16. Noncompliance with Mandatory Continuing Professional Education Requirements or Noncompliance with Requirement to Report MCPE and VCLE; Suspension.

(a) *Notice of Noncompliance.* Within 60 days after the deadline for filing the certification described in Rule 1.15(d), HSBA shall send a certified notice of noncompliance to each active member whose certification shows that the MCPE requirement has not been met, or who has failed to file the completed certification information. Within 30 days of the mailing of such notice of noncompliance, the member shall remedy the noncompliance, demonstrate that the notice of noncompliance was issued erroneously, or submit an affidavit of compliance, if the member asserts that the information on the certification form contained an error.

(b) *Suspension for Noncompliance with Mandatory Continuing Professional Education Requirement or Noncompliance with Requirement to Report MCPE and VCLE.*

(1) Any active member who has not complied with the MCPE requirement in Rule 1.15 or with the mandatory reporting of the MCPE and VCLE requirement in Rule 1.15, and who has not

remedied the noncompliance as provided in subsection (a) of this rule, shall be automatically administratively suspended for noncompliance with Rule 1.15.

(2) An active member suspended under this subsection shall not be reinstated until (a) the member has complied with the MCPE requirement and the MCPE and VCLE reporting requirement; (b) the member has paid a reinstatement fee in an amount set by the HSBA; and (c) the member has paid any dues accrued during the period of suspension.

DATED: _____

EFFECTIVE DATE: _____

/s/ _____
Chief Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

Commentary - Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. Voluntary continuing legal education is valuable to lawyers and attendance at courses is encouraged. These new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit, with resulting enhancement of lawyer services to clients.

Appendix

“E”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

EM. ZIMANDO
CLERK AND
STATE
OF HAWAI'I
SUPREME COURT

2007 OCT 10, AH 9:55

FILED

In the Matter of the Amendment
of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

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 Hawai'i 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 Hawai'i State Bar shall file an attorney registration statement and provide such information as the Board of Directors may require. A member shall notify the Hawai'i State Bar, in writing, within 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 Hawai'i 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 Hawai'i 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 Hawai'i 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

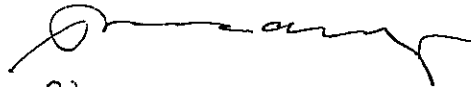
reinstatement to the active roll. Reinstatement shall, unless the attorney is subject to an outstanding order of suspension or disbarment, be automatic upon the payment to the Bar of the dues and fees for the year the request is made, satisfaction of such other requirements as may be imposed from time 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.



David Heinson

LILLIAN C. TAKALUWA



James E. Sullivan