

In the Matter of the Amendment
of the
Rules of the Supreme Court of the State of Hawaii

ORDER AMENDING RULE 8.2 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 subsections (b) and (c) of Rule 8.2 of the Rules of the Supreme Court of the State of Hawaii are amended, effective January 1, 2005, as follows (deleted material is bracketed and stricken, new material is underlined):

8.2. Jurisdiction and Powers of Commission.

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

(c) *Jurisdiction of Commission.*

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

otherwise provided in this subsection (c).

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

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

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

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

(3) The resignation or retirement of any full-time or part-time justice or judge before or after the Commission or the Disciplinary Board, or both, have commenced an investigation or a proceeding, and before final action by the supreme court upon any

recommendation, shall not deprive the Commission, the Disciplinary Board or the supreme court of jurisdiction. [~~The supreme court may refer such resignation to the Commission to evaluate whether acceptance by the supreme court will adversely affect the interest of the public or bring disrepute to the Judiciary or hinder the administration of justice. Thereafter, the Commission may recommend that the resignation be given effect, with such conditions as may be appropriate, or the Commission may recommend that the resignation be given no effect and be deemed a nullity.~~]

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

DATED: Honolulu, Hawaii, December 21, 2004.