

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

ORDER AMENDING RULES 2.13(a) AND 2.15 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 Rules 2.13(a) and 2.15 of the Rules of the Supreme Court of Hawaii are amended, effective January 1, 2006, as follows (deleted material is bracketed and stricken, new material is underscored):

2.13. Attorneys convicted of crimes.

(a) Upon learning [~~that~~] an attorney has been found guilty of a crime [~~which~~] that:

- (1) is a felony;
- (2) would have been a felony if committed in Hawaii, or
- (3) involves dishonesty or false statement,

Counsel shall obtain proof of the finding of guilt and file it with the Board and with the clerk of this court. For purposes of this rule, a finding of guilt [includes a verdict or judgment of guilty, or a plea of nolo contendere, regardless of whether a sentence is suspended or deferred, or whether a conditional discharge is entered] is a verdict or judgment of guilty, a guilty plea, or a no contest plea. Deferred acceptance of a plea, a sentence suspension, or a conditional discharge does not change the definition of guilt for purposes of this rule.

2.15. Reciprocal [~~inactive status due to incapacity, incompetence, or disability and reciprocal discipline] Action.~~

(a) An attorney [~~(i) transferred to inactive status due to incapacity, incompetence, or disability or (ii) disciplined by any foreign or domestic jurisdiction, whether state, federal, or local, has a duty to~~] who has, in any other jurisdiction:

- (1) resigned in lieu of discipline;

_____ (2) been disciplined;
(3) been transferred to inactive status; or
_____ (4) been placed on interim suspension due to misconduct,
incapacity, incompetence, or disability;

shall notify Counsel promptly of ~~[that transfer or discipline]~~ the foreign action. Upon notification ~~[from any source that an attorney has been (i) transferred to inactive status due to incapacity, incompetence, or disability or (ii) disciplined in another jurisdiction]~~ of the foreign action, Counsel shall obtain a certified copy of the order and file it with this court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been the subject of a foreign action as set out in (a) ~~[been (i) transferred to inactive status due to incapacity, incompetence, or disability or (ii) disciplined in another jurisdiction]~~, this court shall forthwith issue a notice directed to the attorney containing: (1) a copy of ~~[said]~~ the order from the other jurisdiction; and (2) an order directing that the attorney inform the court, within 30 days from service of the notice, of any claim by the attorney that an equivalent or substantially equivalent order ~~[the imposition of the identical (i) transfer to inactive status due to incapacity, incompetence, or disability or (ii) discipline]~~ in this state would be unwarranted and the reasons therefor.

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, this court shall ~~[impose the identical (i) transfer to inactive status due to incapacity, incompetence, or disability or (ii) discipline]~~ enter an order imposing the same or substantially equivalent discipline, or restrictions or conditions upon the attorney s license to practice law in this jurisdiction, unless Counsel or the attorney demonstrates, or ~~[this court finds that]~~ it clearly appears upon the face of the other jurisdiction s record ~~[upon which the transfer or discipline is predicated it clearly appears]~~, that:

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

(2) there was such an infirmity of proof establishing the ~~[(i) incapacity, incompetence, or disability or (ii) misconduct]~~ factual basis for the discipline, or restrictions or conditions as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the other jurisdiction s conclusion on that subject; or

(3) the reason for the ~~[original transfer to inactive status]~~ other jurisdiction s discipline, or restrictions or conditions no longer exist[s]; or

(4) the ~~[mis]~~conduct established warrants substantially different ~~[discipline]~~ discipline, or restrictions or conditions in this state. Where this court determines that any of said elements exist, this court shall enter such other order as it deems appropriate.

(d) In all other respects, a final action in another jurisdiction, as set out in section (a), ~~[adjudication in another jurisdiction that an attorney (i) must be transferred to inactive status due to , incapacity, incompetence, or~~

~~disability or (ii) has been guilty of misconduct]~~ shall establish conclusively
~~[(i) the incapacity, the incompetence, or the disability or (ii) the~~
~~misconduct for purposes of a transfer or]~~ the factual basis for the same or
substantially equivalent discipline, or restrictions or conditions on the
attorney s license to practice law in this state.

DATED: Honolulu, Hawai i, November 29, 2005.