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

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

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

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

2.24. Audit of trust accounts.

(a) When audit may be ordered.

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

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

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

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

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

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

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

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

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

(2) Counsel may order and supervise an audit when an attorney s trust account (i) check is paid against insufficient funds or dishonored or (ii) balance falls below zero.

(b) Random audits. The Board may randomly order audits of trust accounts.

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

(d) c) Cost of audit. Audits conducted in any of the circumstances enumerated in paragraph (a)(1) or (b) above shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements. Audits conducted in either of the circumstances enumerated in paragraph (a)(2) shall be at the cost of the attorney unless the Chairperson determines upon trustworthy evidence, the financial institution erred. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit.

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

(e) Review. Counsel's decision to order an audit may be appealed to the Chairperson. The appeal must be filed in writing with the Chairperson within fifteen (15) days after Counsel notifies the attorney an audit has been ordered. The decision of the Chairperson or the Chairperson's designee is not further appealable.

DATED: Honolulu, Hawaii, October 2, 2007.