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SCRU-11-0001047

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the

HAWAI'I RULES OF PROFESSIONAL CONDUCT

ORDER AMENDING RULES OF THE HAWAI'I RULES OF PROFESSIONAL CONDUCT
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

IT IS HEREBY ORDERED that Rules 1.10, 1.15, and Comments of the Hawai'i Rules of Professional Conduct, are amended, effective January 1, 2014, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 1.10. IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE.

* * *

(c) When a lawyer becomes associated with a firm, and the lawyer is prohibited from representing a client because the lawyer's former firm has represented a person whose interests are materially adverse to that client in the same or a substantially related matter, other lawyers in the firm may not thereafter represent the client unless:

(1) the disqualified lawyer did not participate in the matter and has no confidential information regarding the matter;

(2) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

* * *

Rule 1.15. PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT OR THIRD PERSON.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, as a fiduciary. The lawyer shall not commingle such funds or property with his or her own or misappropriate such funds or property to his or her own use or benefit. Funds shall be kept in a separate account in Hawai'i in accordance with Rule 11 of the Rules of the Supreme Court of the State of Hawai'i, and Rule 4 of the Hawai'i Rules Governing Trust Accounting. Other tangible property owned by a client or third person shall be identified as such, appropriately safeguarded[-], and a record kept of the item's receipt and disbursement. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 6 years after the termination of the representation.

* * *

COMMENTS:

[1] *A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and must comply with any recordkeeping Rules established by law or court order. See, e.g., Hawai'i Rules Governing Trust Accounting.*

* * *

DATED: Honolulu, Hawai'i, December 16, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

