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SCRU-11-0000068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

ORDER AMENDING RULES 11 and 17 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

IT IS HEREBY ORDERED that Rules 11 and 17 of the Rules of the Supreme Court of the State of Hawai'i, are amended, effective January 1, 2014, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 11. INTEREST-BEARING TRUST ACCOUNTS PROGRAM.

* * *

(c) Administration.

(1) DEPOSITS OF CLIENTS' FUNDS.

* * *

(B) With respect to all [F]trust [A]accounts, the attorney or law firm shall comply with the Hawai'i Rules of Professional Conduct and the Hawai'i Rules Governing Trust Accounting relating to preserving the identity of funds and property of a client.

* * *

(f) Attorney filings and records.

(1) ATTORNEY FILINGS. Each attorney or law firm shall file, in conjunction with the annual Hawai'i State Bar registration process, [with the Hawai'i Justice Foundation] a certificate of annual compliance with trust accounting procedures, as required by Rule 7 of the Hawai'i Rules Governing Trust Accounting, or a certification that the attorney or law firm is exempt from such a filing[the application of this rule] under Rule 11(e) of these Rules. The certification shall contain the name of the lawyer[firm]or law firm listed on the

account[;], the trust account name, the trust account number[;] the financial institution's name and address[;], and the attorney's Bar number. ~~[Any such certification may be made in conjunction with the annual Hawai'i State Bar registration procedures, and f].~~ Failure to provide the certification within the registration period may result in administrative suspension from the practice of law in this state in the manner provided in Rule ~~[2.18(d)]~~ 17(d)(4)(A) of these Rules until the attorney complies with the requirements of this R[r]ule. No other accounting or record-keeping requirements with respect to ~~[F]trust [A]accounts~~ under this Program shall be imposed on attorneys other than the minimum requirements expressed in this R[r]ule, ~~[and the rules of the Hawai'i Justice Foundation promulgated hereunder]~~ Rule 1.15 of the Hawai'i Rules of Professional Conduct, and the Hawai'i Rules Governing Trust Accounting. All information in the certificate of annual compliance shall be provided electronically by the Hawai'i State Bar to the Hawai'i Justice Foundation and the Office of Disciplinary Counsel, and shall be kept confidential.

(2) RECORDS. An attorney or law firm shall preserve or cause to be preserved the records of all financial depository institution accounts or other records pertaining to the funds of a client maintained by the attorney or law firm in compliance with this R[r]ule and Rule 4 of the Hawai'i Rules Governing Trust Accounting for a period of not less than 6 years subsequent to the completion of the employment to which they relate or the last transaction on the account, whichever occurs last. ~~[pertaining thereto, or subsequent to the final conclusion of the representation of a client relative to such funds, whichever last occurs.~~ ~~The Hawai'i State Bar Association shall promulgate rules under this rule, such rules to be approved by the supreme court, prescribing minimum trust accounting records to be maintained and minimum trust accounting procedures to be followed by all attorneys or law firms that receive or disburse Trust Account money. The minimum procedures shall require reconciliation of Trust Account balances at periodic intervals and annual filing of a certificate reflecting compliance with minimum record-keeping and procedural requirements.]~~ Failure to file the required certificate, filing of a ~~[F]trust [A]account~~ certificate showing non-compliance with either this R[r]ule or Rule 4 of the Hawai'i Rules Governing Trust Accounting ~~[the rules of the Hawai'i State Bar Association promulgated hereunder]~~, or return of a ~~[F]trust [A]account~~ check for insufficient funds shall be good cause for ~~[the Hawai'i Justice Foundation to notify]~~ the Office of Disciplinary Counsel ~~[of the violation and for the Disciplinary Counsel]~~ to undertake an investigation and pursue disciplinary action, if appropriate, against the attorney or law firm.

(g) ~~[Administrative] Rules and Policies [and Rules] of the Hawai'i Justice Foundation.~~ To effectuate reporting by financial institutions of required trust account information, and to ensure the timely payment of the interest earned on IOLTA accounts to the Foundation, ~~t[he] Hawai'i Justice Foundation shall have authority to promulgate its own [administrative] rules and policies [and rules]~~ consistent with this R[r]ule, subject to the approval of the supreme court.

(h) Implementation. Implementation will be effected through the application of this R[r]ule ~~[and the rules of]~~ by the Hawai'i State Bar [Association], as overseen [all as amended] and approved by the supreme court.

Rule 17. THE HAWAI‘I STATE BAR.

* * *

(b) Purposes and powers. The purposes of the Hawai‘i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State. The Bar shall have the power and responsibility for administering the statutes and rules of this court relating to governance of the profession (other than statutes and rules governing contempt of court), as follows: (1) The Bar shall assist this court in carrying out the functions under § 605-14, Hawai‘i Revised Statutes [Unauthorized Practice of Law], Rule 1 [Admissions], Rule 2 [Discipline], and Rule 10 [Lawyers' Fund for Client Protection] while preserving to this court at all times its ultimate authority over admission and discipline of attorneys licensed to practice in this State; and (2) the Bar shall assume primary responsibility for the other rules of the court and programs relating to the profession, its governance and improvement, including Rule 6 [Professional Corporations], Rule 11 [IOLTA], and Rule 16 [Substance Abuse]. In the latter category, the Bar shall have the power and responsibility not only of administration, but also of initiation of all changes and improvements therein, subject always to the oversight of this court through amendment of this R[rule] by the supreme court through the procedures set forth in Rule 17(g) of these Rules~~[as provided below]~~. ~~[, and i]~~In the~~[se]~~ endeavors set forth immediately above, the Bar shall have as its goal the improvement of the practice of law and the standards of professionalism of all attorneys in this State. The constitution and bylaws ~~[and rules]~~ adopted by the Bar shall be binding on all members of the Bar in the same manner as the rules of this court.

* * *

(d) Member registration, information, assessment, suspension and status.

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(2) INFORMATION TO DISCIPLINARY COUNSEL. The Hawai‘i State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board information regarding:

(A)~~(1)~~ the members’ addresses for service of process as required by Rule 2.11 of these R[rules];

(B)~~(2)~~ members’ certification of annual compliance with trust accounting procedures as required by Rule 11(f) of these R[rules];

(C)~~(3)~~ members’ certification of compliance with accounting rules, as required by Rule 4 of the Hawai‘i Rules Governing Trust Accounting~~[1.15(f)(3) of the Rules of Professional Conduct]~~; and

(D)~~(4)~~ the disclosure of professional discipline or convictions required in subsection (i)(A) 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 R[rules].

* * *

(f) Powers and responsibilities of governing body. The Board of Directors shall be charged with the executive functions of the Bar and the enforcement of the rules of this court referred to in part (b) of this Rule above, as well as such bylaws and practices [rules] as the Board may from time to time adopt to assist it in the implementation of its responsibilities set forth in this Rule 17. The Board shall at all times direct its power to the advancement of the art of jurisprudence and the improvement of the administration of justice, and shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the State Bar not inconsistent with law, these Rules, or other rules of court.

* * *

DATED: Honolulu, Hawai'i, October 21, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

