

**HAWAI‘I SUPREME COURT
COMMISSION ON PROFESSIONALISM**

**FIRST REPORT TO THE
HAWAI‘I SUPREME COURT**

Submitted By:

The Honorable James E. Duffy, Jr., Chair
Susan Arnett
The Honorable Joseph Cardoza
Steven Dixon
Lyn Flanigan
The Honorable Daniel Foley
Grace Kido
Carol Mon Lee
The Honorable Steven Levinson
The Honorable Susan Oki Mollway
Carol Muranaka
Michael Nauyokas
Nathan Nikaido
Terence O'Toole
Wesley Park
The Honorable Karen Radius
Carole Richelieu
The Honorable Trudy Senda
Kevin Takata
The Honorable Terence Yoshioka
Calvin Young

March 10, 2006

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

FIRST REPORT TO THE HAWAI'I SUPREME COURT

March 10, 2006

I. ESTABLISHMENT OF THE COMMISSION ON PROFESSIONALISM

The Commission on Professionalism ("Commission") was established on March 14, 2005 by an Order of the Hawai'i Supreme Court signed by Chief Justice Ronald T. Y. Moon (Appendix "A"). Establishment of the Commission was recommended by the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism.

II. THE COMMISSION'S CHARGE

The Order establishing the Commission set forth its charge:

The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

- (a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;
- (b) identify barriers to implementation;
- (c) identify action steps to overcome barriers; and
- (d) propose a post-implementation evaluation process.

III. MEMBERS OF THE COMMISSION

The Order establishing the Commission appointed a total of twenty members (including Commission Chair Associate Justice James E. Duffy, Jr.) reflecting racial, ethnic, gender, and generic diversity, and consisting of judges, practicing lawyers, law school faculty, representatives of entities regulating attorneys, and non-lawyer public members. Biographical information of the Founding Members is provided in Appendix "B."

Note: During the Commission's first year, the following changes occurred in the Commission's membership: (1) Kevin K. Takata was added as a representative of the Office of the Prosecuting Attorneys for the City and County of Honolulu; (2) Judge Mollway's status was changed to "voluntary liaison" from the federal district court at her request and at the suggestion of General Counsel for the Administrative Office of the Federal Courts; (3) Lyn Flanigan, Executive Director of the Hawai'i State Bar Association, was invited by Justice Duffy to be an ex-officio member to reflect her on-going contribution to the Commission's work; and (4) Petra Bray, one of the public, non-lawyer members, who was recommended by the League of Women Voters, resigned when she relocated to the mainland.

IV. ORGANIZATION OF THE COMMISSION'S WORK

In its first meeting, the Commission decided initially to focus its efforts in two areas: (1) improving lawyers competence; and (2) effective lawyer regulation. To this end, three committees were organized, with the Co-Chairs appointed by Justice Duffy:

1. The Mandatory Continuing Legal Education Committee
Co-Chairs: Judge Foley and Calvin Young
2. The Lawyer Regulation Committee
Co-Chairs: Justice Levinson and Carole Richelieu
3. The Remedial Programs Committee
Co-Chairs: Justice Duffy and Wesley Park

Each Commission member volunteered to serve on one or more of these committees. The members of each committee are listed on Appendix "C."

Note: Following the initial Commission meeting, the Lawyer Regulation Committee and the Remedial Programs Committee were joined together in a "Joint Committee on Lawyer Regulation and Remedial Programs" when it became apparent that there would be significant overlap in the committees' work.

V. WORK OF THE MANDATORY CONTINUING LEGAL EDUCATION COMMITTEE

The Mandatory Continuing Legal Education Committee considered a number of basic questions, including the following:

- (a) What is professionalism?
- (b) What is continuing legal education?
- (c) What kinds of continuing legal education programs are offered by private continuing legal education providers, by government offices, and by law firms?
- (d) What is the need?
- (e) What are the statistics on problem attorneys?
- (f) Should there be mandatory courses in certain areas? If so, what areas?

In considering these questions, the committee surveyed law firms, government legal offices, and judges, received information from the Hawai'i State Bar Association concerning CLE seminars offered by the HSBA from 1999-2005, and consulted with the Office of Disciplinary Counsel. The committee also reviewed a 2005 report of the New York State Bar Association, which compiled information about the status and comparison of mandatory continuing legal education in all fifty states. After acquiring this information, the committee met on several occasions to discuss its findings and further consider whether mandatory legal education should be recommended in Hawai'i at this time. The committee's findings and considerations are summarized in Appendix "D."

VI. WORK OF THE JOINT COMMITTEE ON LAWYER REGULATION AND REMEDIAL PROGRAMS

The Joint Committee on Lawyer Regulation and Remedial Programs began its work by considering how the disciplinary system might be improved with a viable diversion program for minor misconduct matters to non-disciplinary proceedings pursuant to Rule 2.7(b)(3) of the Rules of the Supreme Court of Hawai'i (RSCH). Before considering how this might be done, the Committee felt it was imperative to survey what programs and other educational vehicles concerning Professionalism and Ethics were presently in place at the William S. Richardson School of Law, the Hawai'i Supreme Court Board of Bar Examiners, the Hawai'i Professionalism Course, the Hawai'i State Bar Association, and the Office of Disciplinary Counsel. A summary of the survey information is provided in Appendix "E."

The committee then focused its attention on the January 23, 1996 Hawai'i Supreme Court "Order Approving Referral Agencies" regarding agencies which are presently authorized by the court to receive non-disciplinary referrals in minor misconduct matters pursuant to RSCH 2.7(b)(3).

Finally, the committee considered a proposed change in RSCH 2.24 regarding audits of client trust accounts and financial responsibility for the cost of such an audit.

The work of the committee is summarized in Appendix "F."

VII. COMMISSION MEETINGS

The Minutes of the Commission meetings are presented in Appendix "G."

VIII. RECOMMENDATIONS OF THE COMMISSION

The Commission respectfully makes three recommendations to the Hawai'i Supreme Court:

1. That the January 23, 1996 Hawai'i Supreme Court "Order Approving Referral Agencies" regarding referral of minor misconduct matters to nondisciplinary proceedings be amended to read as follows (a copy of the January 23, 1996 Order is appended as Appendix "H" for your comparison):

Upon consideration of Disciplinary Counsel's request for approval of agencies to which referrals may be made pursuant to Rule 2.7(b)(3) of the Rules of the Supreme Court of the State of Hawai'i,

IT IS HEREBY ORDERED that the following agencies, entities, programs, or individuals are authorized, subject to the approval of Counsel in any given case, for referrals pursuant to Rule 2.7(b)(3):

1. Hawai'i State Bar Association (HSBA), including any agencies, entities, programs, or individuals, with which or whom the HSBA has arranged for the provision of services or referrals;
2. Attorneys and Judges Assistance Program (AAP), including any agencies, entities, programs, or individuals (whether located in Hawai'i or elsewhere), with which or whom the AAP has arranged for the provision of services or referrals;
3. Hawai'i licensed physicians (including, but not limited to, psychiatrists) and/or psychologists;
4. Certified Public Accountants and/or other allied accounting professionals;
5. Continuing legal education or professionalism courses and/or programs;
6. Mediation, arbitration, or other forms of alternative dispute resolution; and
7. Any other agencies, entities, programs, or individuals, not otherwise enumerated above, that are deemed appropriate under the circumstances.

This order supercedes this court's Order Approving Referral Agencies, dated January 23, 1996.

Why recommended: The proposed Amended Order would broaden the prior list of agencies, entities, programs, and individuals authorized for referrals pursuant to RSCH 2.7(b)(3) for non-disciplinary proceedings for minor misconduct. The intent of this change is to encourage the Office of Disciplinary Counsel (ODC) and the Hawai'i State Bar Association (HSBA) to work together to divert minor misconduct matters to non-disciplinary proceedings, as authorized by RSCH 2.7(b)(3). Such diversion would be mutually beneficial; the HSBA members affected would be referred to appropriate service providers who would assist

the lawyer to deal with the cause of the minor misconduct, or resolve a dispute which led to the ODC complaint, and the ODC would be able to focus its resources on misconduct which is not minor.

2. That RSCH 2.24 entitled "Audit of trust accounts" be amended to read as follows (deleted language lined-out and new language underlined):

2.24. Audit of Trust Accounts.

(a) **When Audit May be Ordered.** Upon occurrence of any of the following, the Chairperson may order an audit of any trust accounts maintained by an attorney:

(1) Failure to file the trust account verification required under authority of Rule 1.15 of the Hawai'i Rules of Professional Conduct;

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

~~(3)~~ A petition for creditor relief is filed on behalf of an attorney;

~~(4)~~ Felony charges are filed against an attorney;

~~(5)~~ 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 on the grounds of incompetence or disability;

~~(6)~~ A claim against the attorney is filed with the Lawyers' Fund for Client Protection;

~~(7)~~ Upon court order, or

(87) When requested for other good and sufficient reasons by Counsel, a hearing committee or officer, or the Board.

(b) **Random Audits.** The Board may randomly order audits of trust account.

~~(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.~~

(c) **When Audit is Authorized.** When an attorney's trust account check is paid against insufficient funds or dishonored or an attorney's trust account balance is below zero that trust account may be audited under the supervision of Counsel.

(d) **Cost of Audit.** Audits conducted in any of the circumstances enumerated in paragraph (a) 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 any of the circumstances enumerated in paragraph (c) shall be at the cost of the attorney audited unless there is clear and convincing evidence that the financial institution erred.

(e) **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.

Why recommended: The Office of Disciplinary Counsel is spending a significant portion of its time and budget resources on audits arising out of attorney's mishandling of client trust account funds. At present, the audits take an average of 40-80 hours to complete, and the cost of the audit is borne by all of the HSBA members thru their ODC

assessment. The intent of the proposed amendment to RSCH 2.24 is to shift the cost of an audit of the attorney's trust account to the attorney audited unless there is clear and convincing evidence that the financial institution erred. Note: It is discretionary with the ODC as to whether the trust account will be audited, as there may be situations where the attorney provides a satisfactory explanation for the trust account discrepancy, which obviates the necessity of an audit.

3. That Hawai'i not adopt mandatory continuing legal education at this time. The Commission, however, notes the following: (a) it strongly supports the present mandatory Hawai'i Professionalism Course (RSCH 1.14) for new bar admittees; (2) Hawai'i should consider creating a mandatory refresher course on Professionalism and Ethics in the future, which course could be presented by Internet access, with an interactive component, and quiz; (3) judges can do more to encourage professionalism in their courts; and (4) the Commission intends to work with judges and the HSBA and ODC to identify CLE courses which the HSBA members may want or need.


Why recommended: Stated simply, the Commission did not find a need for mandatory continuing legal education at this time in Hawai'i. Requiring attorneys to attend the same substantive classes regardless of their areas of practice does not make sense, nor does it benefit the public served by the attorneys. The mandatory Hawai'i Professionalism Course for new bar admittees (RSCH 1.14) in its present program evolution of video vignettes, small groups discussion followed by large group discussion, has been well received. While this format works well with the size of a new bar admittees class, it would not be practical nor logistically feasible to present this program to the entire bar. Rather, a

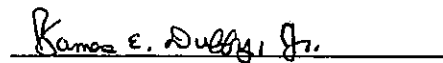
refresher course on Professionalism and Ethics could be presented by Internet access, with an interactive component and quiz, which would be more convenient, less costly, and avoid the logistical difficulties in presenting the course to the entire bar.

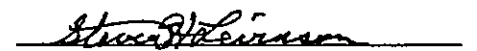
Regarding the role of judges in enhancing Professionalism, it was observed that there was a wide divergence in the role individual judges played with respect to the conduct of attorneys appearing in their courtrooms, and that attorneys generally behaved at the level expected of them by the judges. It is suggested that this is a subject that could be addressed in a future Judicial Education Conference.


With respect to identifying courses that the HSBA members may want or need, it was noted that larger law firms and government agencies provide "in-house" or other opportunities for CLE and that these opportunities are generally not as available to smaller firms and solo practitioners. It was learned from the HSBA that, at present, most of the CLE programs offered have been prompted by suggestions of the various HSBA sections, i.e., Bankruptcy Law, Real Property and Financial Services, etc. Programs on legal ethics and professionalism are usually poorly attended and unprofitable financially and hence are not frequently offered. Regardless, the Commission suggests that it should work with judges, the HSBA, and ODC to identify courses (both substantive and legal ethics and professionalism) that the bar members may want or need.

Respectfully submitted this 10th day of March, 2006.



JUDGE DANIEL R. FOLEY
Co-Chair, Continuing Legal
Education Committee


JUSTICE JAMES E. DUFFY, JR.
Chair, Commission on
Professionalism
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs


JUSTICE STEVEN H. LEVINSON
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs


CALVIN E. YOUNG
Co-Chair, Continuing Legal
Education Committee


WESLEY PARK
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs


CAROLE R. RICHELIEU
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs

Appendix

“A”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Establishment of

HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM

KIRIYAKA
CLERK OF THE SUPREME COURT
STATE OF HAWAII

2005 MAR 14 PM 1:22

FILED

ORDER ESTABLISHING THE HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM
(By: Moon, C.J., for the court¹)

WHEREAS, in August 1996, the Conference of Chief Justices (CCJ) passed a resolution calling for a national study and action plan regarding lawyer conduct and professionalism, wherein the CCJ noted a significant decline in professionalism in the bar and a consequent drop in the public's confidence in the profession and the justice system in general and concluded that a strong coordinated effort by state supreme courts to enhance their oversight of the profession was needed; and

WHEREAS, in March 1999, the CCJ's January 1999 *National Action Plan on Lawyer Conduct and Professionalism* was published and disseminated to chief justices, lawyer disciplinary agencies, and state bar associations throughout the United States; and

WHEREAS, the National Action Plan sets forth programs, initiatives, and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession; and

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

WHEREAS, on August 2, 2001, the CCJ adopted the strategies for implementing the National Action Plan formulated by the American Bar Association in its report, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*; and

WHEREAS, the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism (National Action Plan Committee), charged with the task of reviewing the National Action Plan and making recommendations to the supreme court, issued its final report on May 24, 2004.

NOW, THEREFORE, upon the recommendation of the National Action Plan Committee,

IT IS HEREBY ORDERED that:

(1) The Hawai'i Supreme Court's Commission on Professionalism is hereby established.

(2) The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

(a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;

(b) identify barriers to implementation;

- (c) identify action steps to overcome barriers;
and
- (d) propose a post-implementation evaluation
process.

(3) The Chair of the Commission shall be the Chief Justice or the Chief Justice's designee. Commission members shall be appointed by the chief justice, upon the concurrence of a majority of the justices of the supreme court. In addition to the Chair, the Commission shall be comprised of a total of nineteen (19) members that reflect racial, ethnic, gender, and geographic diversity and as prescribed below:

(a) Judges.

- (i) Four (4) incumbent Hawai'i trial court judges chosen from the First, Second, Third, and/or Fifth Judicial Circuits;
- (ii) Two (2) incumbent judges chosen from the Hawai'i Supreme Court or the Intermediate Court of Appeals or both;
and
- (iii) One (1) incumbent judge chosen from the United States District Court for the District of Hawai'i or the United States Court of Appeals for the Ninth Circuit.

(b) Practicing Lawyers. Four (4) practicing lawyers who are members of the Hawai'i State Bar Association, chosen from a list of ten

(10) nominees recommended by the Board of Directors of the Hawai'i State Bar Association.

(c) Law School Faculty. One (1) law school faculty member who is a full-time faculty member from the University of Hawai'i Richardson School of Law, chosen from a list of three (3) nominees recommended by the dean of the law school.

(d) Attorney Regulatory Entities. One representative each from (i) the Disciplinary Board of the Hawai'i Supreme Court, (ii) the Lawyers' Fund for Client Protection, (iii) the Attorneys and Judges Assistance Program, and (iv) the Board of Bar Examiners, chosen from a list of three (3) nominees recommended by the board and/or trustees of each respective entity.

(e) Public Members. Three (3) non-lawyer citizens active in public affairs.

(4) With the exception of the Chair of the Commission, the members of the Commission shall serve for a term of four (4) years provided, however, in the discretion of the chief justice, the initial appointments may be for a term of less than four (4) years so as to accomplish staggered terms for the membership of

the Commission. A Commissioner may be appointed for additional terms.

(5) A Commissioner who no longer meets the qualifications of this rule shall be deemed to have completed the Commissioner's term and the Commissioner's office shall be deemed vacant. Any vacancy on the Commission shall be filled by the chief justice, upon the concurrence of a majority of the justices of the supreme court, for the unexpired term.

(6) The Commission shall serve in an advisory capacity only, shall give continuing consideration to the enhancement of professionalism in the practice of law, and shall make reports and/or recommendations to the supreme court, annually, regarding implementation of the National Action Plan and any other relevant information regarding the work of the Commission.

(7) Commission members shall not receive compensation for their services, but may be reimbursed for travel and other expenses that are incidental to the performance of their duties.

(8) The Commission shall have no authority to impose discipline upon any members of the Hawai'i State Bar or to amend, suspend, or modify the Hawai'i Rules of Professional Conduct (HRPC). The Commission, however, may, if appropriate, recommend amendments to the HRPC to the supreme court for consideration.

IT IS FURTHER ORDERED, pursuant to the foregoing, that the following individuals are appointed as members of the Commission on Professionalism, effective immediately upon the filing of this order and for the term as specified below:

For a term expiring on March 13, 2007.

Hon. Karen Radius, First Judicial Circuit
Hon. Terence Yoshioka, Third Judicial Circuit
Hon. Daniel Foley, Appellate Court
Hon. Susan Oki Mollway, Federal Court
Susan Arnett, HSBA
Terence O'Toole, HSBA
Carol Muranaka, Lawyers Fund for Client Protection
Steven Dixon, Attorneys & Judges Assistance Program
Wesley Park, Public member

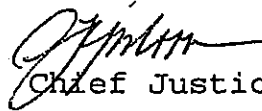
For a term expiring on March 13, 2009

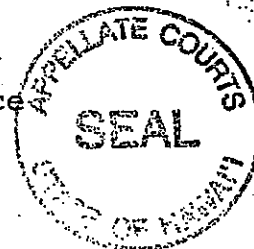
Hon. Joseph Cardoza, Second Judicial Circuit
Hon. Trudy Senda, Fifth Judicial Circuit
Hon. Steven Levinson, Appellate Court
Calvin Young, HSBA
Michael Nauyokas, HSBA
Carol Mon Lee, Richardson School of Law
Carole Richelieu, ODC
Grace Nihei Kido, Board of Bar Examiners
Petra Bray, Public member
Nathan Nikaido, Public member

IT IS FINALLY ORDERED that the HONORABLE JAMES E. DUFFY, JR., is appointed as the Chief Justice's designee and shall serve as Chair of the Commission.

DATED: Honolulu, Hawai'i, March 14, 2005.

FOR THE COURT:


Chief Justice



Appendix

“B”

MEMBERS OF THE COMMISSION ON PROFESSIONALISM

SUSAN ARNETT, ESQ., a graduate of Catholic University of America Law School, is a Deputy Public Defender.

PETRA BRAY, born and reared in California, moving to Seattle, Washington in 1985. Graduated from Stephens College and City University majoring in Sociology. Married for 37 years to George. Two adult sons, Stephen and Michael. A resident of Honolulu since June, 2002. Retired Probation Officer; 15 years with King County Probation, Seattle, WA. Life-long community volunteer, including Visitors Aloha Society of Honolulu, League of Women Voters, and the Visitor Assistance Program through the Department of the Prosecuting Attorney City and County of Honolulu.

JUDGE JOSEPH CARDOZA is a judge of the Second Judicial Circuit Court, State of Hawai'i, and a current Vice President, Hawai'i State Trial Judge Association. He spent approximately a decade in private practice and a decade in government practice before becoming a judge. Judge Cardoza serves or has served as a continuing legal education instructor and as a volunteer with a variety of community organizations.

STEVEN B. DIXON, ESQ., a 1975 graduate of the University of Hawai'i at Hilo, has practiced law in small to medium sized law partnerships, and as a solo practitioner, on the Big Island since 1978. His areas of practice included real estate, business, tax and estate planning. He has also served as Principal Broker for Kohala Ranch, and the oldest and largest vacation ownership developer in the world, Fairfield Resorts, Inc. In December 2005, he succeeded retiring Director Peter Donahoe as Director of the Hawai'i Supreme Court Attorneys and Judges Assistance Program. He serves as a volunteer on the Hawai'i Medical Association Physician's Health Committee. An avid sailor, and author of Hawai'i sailing stories "The Hawaiian Voyages of the Ono Jimmy", he has served as Commodore of the Kona Sailing Club and is a member of the Hawai'i Yacht Club. He sailed to O'ahu and now lives on his CSY '44 cutter rigged sailing vessel in the Ala Wai Harbor.

ASSOCIATE JUSTICE JAMES E. DUFFY, JR. is an Associate Justice of the Hawai'i Supreme Court. Justice Duffy was a founding member of the firm Fujiyama, Duffy & Fujiyama, a practicing trial lawyer (representing both plaintiffs and defendants), mediator, arbitrator, and special master. Justice Duffy is a past President of the Hawai'i State Bar Association, and is a member of the American College of Trial Lawyers, the American Board of Trial Advocates, and the American Inn of Court.

ASSOCIATE JUDGE DANIEL R. FOLEY has been an Associate Judge at the Intermediate Court of Appeals, State of Hawai'i, since October 2000. He received his B.A. in 1969 and his J.D. in 1974 from the University of San Francisco. Prior to his appointment as a judge, he was a partner for eleven years in the law firm of Partington & Foley where he handled federal and state civil rights cases. He also was an Adjunct Professor of Civil Rights at the William S. Richardson School of Law. From 1984 to 1987 Judge Foley was legal director of the American Civil Liberties Union of Hawai'i, and from 1975 to 1983 he was counsel to various Micronesian governmental bodies, constitutional conventions, and organizations.

GRACE NIHEI KIDO, ESQ. is a partner in the Finance and Real Estate Department of Cades Schutte, LLP. She is also the Chairperson of the firm's Recruiting Committee and a member of the Summer Program Committee. Ms. Kido obtained her B.A. with distinction from the University of Hawai'i in 1977, and her law degree from the University of Hawai'i William S. Richardson School of Law in 1985, following a five-year career in Human Resources Management in the hotel industry. While at the University of Hawai'i earning her law degree, Ms. Kido was the casenotes editor and a member of Law Review and was a finalist in the school's Moot Court competition. Ms. Kido has been a member of the Board of Examiners of the Hawai'i Supreme Court since 1994; is the current Treasurer and has been on the Board of Directors of the Real Property and Financial Services Section of the Hawai'i State Bar Association since 2000; is a Fellow of the American College of Mortgage Attorneys; and is a former director of the William S. Richardson School of Law Alumni Association and of the Young Lawyer's Division of the Hawai'i State Bar.

ASSOCIATE JUSTICE STEVEN H. LEVINSON (Hawai'i Supreme Court Liaison to Committee) has been an Associate Justice of the Hawai'i Supreme Court since 1992. He is the Court's liaison to HSBA, ODC, the Disciplinary Board, the Lawyers' Fund for Client Protection, and the Hawai'i Justice Foundation. Before his appointment to the Supreme Court, Justice Levinson practiced law for almost 17 years, concentrating in personal injury and commercial litigation, and he was a First Circuit Court judge, assigned to the criminal division, for three years.

JUDGE SUSAN OKI MOLLWAY was born and raised in Hawai'i. She received her bachelor's and master's degrees in English literature from the University of Hawai'i, and graduated cum laude from Harvard Law School, where she was the editor in chief of the Harvard Civil Rights-Civil Liberties Law Review. Nominated by President Clinton, Susan Oki Mollway became a United States District Judge for the District of Hawai'i in 1998. Before becoming a judge, she was a partner at the Honolulu law firm of Cades Schutte, where she concentrated in commercial litigation. One of her cases reached the United States Supreme Court, where she argued successfully. In 1998, Judge Mollway received the Trailblazer Award from the National Asian Pacific American Bar

Association. She was named the Outstanding Woman Lawyer of the Year in 1987 by the Hawai'i Women Lawyers and was the 1999 Edith House Lecturer at the University of Georgia School of Law. She was recently awarded the 2004 Outstanding Judicial Achievement Award by the Hawai'i Women Lawyers.

CAROL MON LEE, ESQ. has been Associate Dean, University of Hawai'i, William S. Richardson School of Law since 1997. She has a JD from UC Hastings College of Law, a BA from Barnard College, and an MA from Columbia University. Ms. Mon Lee was previously engaged in private law practice in Los Angeles and Honolulu. Ms. Mon Lee was also a Senior Vice-President at American Trust Co. of Hawai'i and at Bishop Trust Co. 1978-1993. She is also a past president of Hawai'i Women Lawyers and the Hawai'i Justice Foundation.

CAROL K. MURANAKA, ESQ. is an attorney in the Office of Chief Counsel, Internal Revenue Service at Honolulu, Hawai'i. A former Assistant United States Attorney, Ms. Muranaka is also a Special Assistant United States Attorney for the District of Hawai'i in protecting the interests of the Government with respect to its federal tax claims in Bankruptcy Court. She is a former president and founding director of the Bankruptcy Law Section of the Hawai'i State Bar Association; former officer and currently a director of the Hawai'i State Bar Association; currently Chair of the HSBA Publications Committee, which is responsible for the *Hawai'i Bar Journal*, official monthly bar magazine, and the bar directory.

MICHAEL F. NAUYOKAS, ESQ. has mediated over 900 employment, labor, personal injury insurance, bad faith, Jones Act, longshore, commercial, products liability, construction, workers' compensation and other disputes in Honolulu and has been selected as an arbitrator in over 150 more. Over 99% of the cases he mediated were settled in one day. All but three subsequently settled. He has a boutique law practice specializing primarily in mediation and arbitration and employment and labor law. Mr. Nauyokas holds an "AV" rating (the highest possible) under the Martindale-Hubbell Rating System, is named in the Martindale-Hubbell Bar Register of Preeminent Lawyers, is named in The Best Lawyers Guide and The Best Lawyers in America, and has been featured in Honolulu Magazine's "Best Lawyers in Hawai'i" and Midweek's "Newsmakers." He is a Fellow of the American College of Civil Trial Mediators and member of the United States District Court Mediation Committee for the District of Hawai'i.

Mr. Nauyokas is a frequent lecturer on numerous topics in mediation, arbitration, employment and labor law areas. Mr. Nauyokas has taught numerous courses in Negotiation, and Employment & Labor Law at the University of Hawai'i and Hawai'i Pacific University. He has appeared as an expert on ADR and Employment Law on numerous television and radio shows. Among the numerous organizations he has

served as a lecturer are: The U.S. Department of Labor, the EEOC, the Office of Federal Contract Compliance Programs (OFCCP), the Society for the Professionals in Dispute Resolution (now ACR), National Employment Lawyers Association ("NELA"), the American Arbitration Association, the Society for Human Resource Management, and the Hawai'i Employers Council.

NATHAN NIKAIDO, a 1978 graduate of the University of Hawai'i (B.A., Economics). 1978-1983 Masters degree program, Urban and Regional Planning. (Use of mediation in the resolution of land use disputes). 1982-present, volunteer mediator, The Mediation Center of the Pacific. Approximately 1,600 cases mediated at District Court. 1985-present, Accountant, The Mediation Center of the Pacific. 2004 Liberty Bell award recipient, Hawai'i State Bar Association.

TERENCE O'TOOLE, ESQ. is an alumni of UC Berkeley, Boalt Hall School of Law and was admitted to the California Bar in 1971, the Hawai'i Bar in 1972 and the D.C. Bar in 1989. He is a director of the law firm Starn O'Toole Marcus & Fisher and has over twenty-five years experience in the area of commercial and complex litigation, with an emphasis in construction claims and disputes representing owners, contractors and design professionals. Mr. O'Toole co-authored an article for the Hawai'i Bar Journal that has been republished in the "Giants" of the Trial Bar V: Cross-Examination of Expert Witness. He has also organized and spoken at various professional seminars and legal conferences in California, Hawai'i and Singapore on construction claims. Mr. O'Toole was named in "Best Lawyers in America."

WESLEY T. PARK served Hawai'i Dental Service as its former President and CEO from 1995-2001. Currently, he is president of Maunawili Consulting. Mr. Park holds a bachelor's and master's of education degree from the University of Hawai'i, IMLE certificate from Harvard University, and an Honorary Doctor of Philosophy degree from Hong-ik University in Korea. He served as Captain in the U.S. Air Force and was on active duty from 1960-1965. He was Vice-President for Administration at the East-West Center, Dean Emeritus for the College of Continuing Education and Community Service at UH, and Director of the Small Business Management Program at UH. Mr. Park has also served on the boards of many businesses and organizations including the Honolulu Academy of Arts, Coalition for a Drug-Free Hawai'i, First Hawaiian Bank, Korean Chamber of Commerce, Honolulu Symphony Society, Verizon Hawai'i, and Rehabilitation Hospital of the Pacific.

JUDGE KAREN M. RADIUS graduated from the George Washington University National Law Center in Washington D.C. in 1974. After being admitted to the Hawai'i Bar that same year, she began work with the Legal Aid Society of Hawai'i as a staff attorney. From 1974-1979, she served in numerous capacities with the Legal Aid

Society including that of supervising attorney of the Waianae Legal Aid office and acting Executive Director. In 1980, Judge Radius established the law firm of Radius & Lau that continued until she was appointed to the Family Court bench as a per diem judge in 1993. In 1994, she was appointed as a full time Family Court judge. She has served in each of the divisions of the Family Court, including being lead of the Domestic Division handling divorces, child custody, support and property division cases. In 2001, she was the founding judge of the new Hawai'i Juvenile Drug Court.

CAROLE R. RICHELIEU, ESQ. is Chief Disciplinary Counsel of the Office of Disciplinary Counsel and Fund Administrator for the Lawyers' Fund for Client Protection. She received her B.A. degree with High Honors from the University of Hawai'i in both Pre-Law (Criminology) and Psychology and her J.D. degree from the William S. Richardson School of Law. She engaged in civil litigation practice and served as a member of the Medical Claims Conciliation Panel and arbitrator for the Better Business Bureau before joining ODC in 1989.

She has made numerous presentations on legal ethics and client protection to law firms, law students, legal professionals, and the public, as well as authored many articles and contributed to various manuals. Currently, she is a member of the Hawai'i Supreme Court's Commission on Professionalism, as well as co-chair on the Hawai'i Supreme Court's course on professionalism. Formerly, she was a co-chair of Hawaii's Chief Justices' National Action Plan which produced the first report in the nation. She has served as a Supreme Court appointee to the Committee to Review the Code of Judicial Conduct, the Committee on the Certification of Legal Specialists, and the Committee on Unbundling Legal Services/Unauthorized Practice of Law and continues to serve on the Board of Examiners.

She is a Bencher with the American Inn of Court and a notary, and a member of the ABA, HSBA, National Organization of Bar Counsel (NOBC), National Client Protection Organization (NCPO), and the ABA Center for Professional Responsibility. She was appointed by the ABA to serve on the ABA's Advisory Commission on Lawyers' Funds for Client Protection (2000-2001) and Chair the ABA's Advisory Commission on Lawyers' Funds (2001-2002). A former Vice-President of NCPO, she is now President and continues to serve as NCPO's liaison to the ABA and the ABA Center Coordinating Council, as well as on NCPO's Trustee Training Project. She has served on the Nominating Committees of both NOBC and NCPO. She also represented the United States on an International Bar Association client protection panel in October 2004.

She also serves on the HSBA's Goal Group 2 (which promotes the integrity and competency of Hawai'i lawyers) and the Task Force on Public Protection, and is liaison with HSBA, as well as served on the Subcommittee on Disciplinary Rules for the Standing Committee on Lawyer Competence and various other committees.

JUDGE TRUDY SENDA has been a judge of the District Court of the Fifth Circuit since May 2001. Prior to that, she was in private practice for 17+ years in Honolulu and Kauai. She currently serves as the acting deputy chief judge for the circuit regarding matters involving the District Court's jurisdiction over criminal, traffic and civil matters.

JUDGE TERENCE T. YOSHIOKA has been a District Family Court judge since April 28, 2000. He graduated from the University of Washington School of Law in 1969 and the University of Hawai'i in 1966. He was a former partner of Nakamoto, Yoshioka and Okamoto, a Law Corporation.

CALVIN E. YOUNG, ESQ., a partner with Ayabe Chong Nishimoto Sia & Nakamura, is a 1982 graduate of the William S. Richardson School of Law. His practice concentrates on cases involving professional liability, aviation and product liability. Mr. Young was a member of the Disciplinary Board of the Hawai'i Supreme Court from 1995 to 2001 and since 2002 is the Chair of the HSBA Committee on Professional Responsibility.

Appendix

“C”

COMMISSION ON PROFESSIONALISM

REMEDIAL PROGRAMS COMMITTEE

**Co-chairs: Associate Justice James E. Duffy, Jr.
Mr. Wesley Park**

	Name	Representing
1.	Judge Joseph Cardoza	Second Circuit
2.	Steven Dixon, Esq.	Attorneys & Judges Assistance Program
3.	Associate Justice James E. Duffy, Jr.	Chair
4.	Carol Muranaka, Esq.	Lawyers Fund for Client Protection
5.	Terence O'Toole, Esq.	HSBA
6.	Mr. Wesley Park	Public member
7.	Judge Karen Radius	First Circuit
8.	Judge Trudy Senda	Fifth Circuit

COMMISSION ON PROFESSIONALISM

MANDATORY CONTINUING LEGAL EDUCATION COMMITTEE

**Co-chairs: Associate Judge Daniel Foley
Calvin Young, Esq.**

	Name	Representing
1.	Susan Arnett, Esq.	HSBA
2.	Associate Judge Daniel Foley	Appellate Court
3.	Grace Nihei Kido, Esq.	Board of Bar Examiners
4.	Associate Dean Carol Mon Lee	William S. Richardson School of Law
5.	Carol Muranaka, Esq.	Lawyers Fund for Client Protection
6.	Michael Nauyokas, Esq.	HSBA
7.	Judge Terence Yoshioka	Third Circuit
8.	Calvin Young, Esq.	HSBA

COMMISSION ON PROFESSIONALISM

LAWYER REGULATION COMMITTEE

**Co-chairs: Associate Justice Steven Levinson
Carole Richelieu, Esq.**

	Name	Representing
1.	Ms. Petra Bray	Public Member
2.	Associate Justice Steven Levinson	Appellate Court
3.	Judge Susan Oki Mollway	Federal Court
4.	Carol Muranaka, Esq.	Lawyers Fund for Client Protection
5.	Mr. Nathan Nikaido	Public Member
6.	Carole Richelieu, Esq.	ODC
7.	Kevin Takata, Esq.	HSBA

Appendix

“D”

Meeting notes of the Committee on Mandatory Continuing Legal Education

I. Members of the Committee

Co-chairs: Honorable Daniel R. Foley
Calvin E. Young

Susan Arnett
Grace N. Kido
Carol Mon Lee
Carol K. Muranaka
Michael F. Nauyokas
Honorable Terence T. Yoshioka

II. Meeting on July 20, 2005

Attendees: Calvin E. Young, Hon. Daniel R. Foley, Susan Arnett, Grace N. Kido,
Carol Mon Lee, Carol K. Muranaka, Michael F. Nauyokas

Calvin explained that he runs the Professionalism Course, which is mandatory for new admittees of the Hawaii bar. Occasionally there are other attorneys who participate.

Judge Foley posed the question: is the mandate of this committee mandatory continuing legal education? Other questions that need to be considered are:

- (a) What is continuing legal education?
- (b) What kinds of continuing legal education programs are offered by the private continuing legal education providers, by government offices, and by law firms or offices?
- (c) What is the need?
- (d) What are the statistics on the problem attorneys?
- (e) What is less than mandatory?
- (f) Should there be mandatory courses in certain areas? What areas?
- (g) What is professionalism?

It was discussed that one source on the feedback on what is wrong with lawyers is the Office of the Disciplinary Counsel. Judges are another source of feedback.

Information as to the types of courses available from the HSBA was distributed. (See attached.) The next step is to find out what else is being offered. It was discussed that doctors, accountants and realtors have mandatory continuing legal education. However, is there a need for lawyers to have mandatory continuing education and, if so, what form should it take? One example is that many lawyers doing appellate work do not follow HRAP Rule 28. The rule clearly sets out the requirements for briefing an appellate case but for some reason it is problematic for some lawyers.

There was a consensus that "Professionalism" needs to be defined.

It was pointed out that the consumer lawyers' organization produced their own seminars. So the question arises whether there is a gap group -- solo practitioners and small law firms -- who might not have the means to have the training.

It was agreed that a survey would be sent to law firms and government legal offices to find out whether these offices maintained their own continuing legal education programs. Judge Foley stated that he would check with Carole Richelieu on when the committee could obtain certain statistics. He also stated that he would discuss with Justice Duffy about soliciting comments from the judges regarding lawyer competence. It was also agreed that the committee should check on what's happening in the other states.

III. Meeting on October 19, 2005

Attendees: Calvin E. Young, Hon. Daniel R. Foley, Susan Arnett, Grace N. Kido, Carol Mon Lee, Carol K. Muranaka, Michael F. Nauyokas, Hon. Terence Yoshioka

A. Survey results

Questionnaires were sent to 47 law firms and 16 government offices (a total of 63 offices) to inquire whether they maintained their own continuing legal education programs. Responses were received from 26 law firms and 6 government offices: a total of 32. Out of the 32 responses, 19 offices (15 private and 4 government) said that they conduct continuing legal education courses or seminars in-house.

The number of attorneys in the law firms range from 5 to 60. The majority of the offices that have continuing legal education in-house do them periodically.

B. Information about MCLE involving other states

<u>State</u>	<u>Est. no. of attys</u>	<u>Mandatory CLE</u>	<u>Unified bar</u>	<u>Requirements</u>
Alabama	12,363	yes	yes	12 hrs. per year
Alaska	2,808	no	yes	
Arizona	13,149	yes	yes	15 hrs. per year
Arkansas	5,900	yes	no	12 hrs. per year
California	138,000	yes	yes	25 hrs over 3 yrs.
Colorado	20,773	yes	no	45 hrs over 3 yrs.
Delaware	2,389	yes	no	24 hrs. over 2 yrs.
District of Columbia	42,800	no	yes	
Florida	72,728	yes	yes	30 hrs. over 3 yrs.
Georgia	24,981	yes	yes	12 hrs. per year

Hawaii	4,358	yes	yes	New admittees must complete a Professionalism course
Idaho	2,947	yes	yes	30 hrs. over 3 yrs.
Illinois	78,101	yes	no	20 hrs. over 2 years
Indiana	13,786	yes	no	36 hrs. over 3 calendar yrs.
Iowa	6,811	yes	no	15 hrs. per year
Kansas	8,633	yes	no	12 hrs. per year
Kentucky	10,591	yes	yes	12.5 hrs. per yr.
Louisiana	19,872	yes	yes	12.5 hrs. per yr.
Maine	3,449	yes	no	11 hrs. per year
Maryland	20,944	no	no	
Massachusetts	43,775	no	no	
Michigan	29,928	no	yes	
Minnesota	24,455	yes	no	45 hrs. over 3 years
Mississippi	7,100	yes	yes	12 hrs. per year
Missouri	20,682	yes	yes	15 hrs. per year
Montana	2,652	yes	yes	15 hrs. per year
Nebraska	4,907	no	yes	
Nevada	5,784	yes	yes	12 hrs. per year
New Hampshire	3,207	yes	yes	12 hrs. per year
New Jersey	55,687	no	no	
New Mexico	4,960	yes	yes	15 hrs. per year
New York	215,335	yes	no	24 hrs. over 2 yrs for experi.
North Carolina	17,363	yes	yes	12 hrs. per year
North Dakota	1,869	yes	yes	45 hrs. over 3 years
Ohio	35,973	yes	no	24 hrs. every 2 years
Oklahoma	11,701	yes	yes	12 hrs. per year
Oregon	10,628	yes	yes	45 hrs. over 3 years
Pennsylvania	43,969	yes	no	12 hrs. per year
Rhode Island	4,465	yes	yes	10 hrs. per year
South Carolina	8,700	yes	yes	14 hrs. per year
South Dakota	1,661	no	yes	
Tennessee	14,365	yes	no	15 hrs. per year
Texas	69,463	yes	yes	15 hrs. per year
Utah	6,000	yes	yes	27 hrs. over 2 years
Vermont	2,112	yes	no	20 hrs. over 2 years
Virginia	25,384	yes	no	12 hrs. per year
Washington	21,151	yes	no	45 hrs. over 3 years
West Virginia	4,450	yes	no	24 hrs. over 2 years
Wisconsin	13,710	yes	yes	30 hrs. over 2 years
Wyoming	1,389	yes	yes	15 hrs. per year

This above information was compiled by the New York State Bar Association, "Comparison of the Features of Mandatory Continuing Legal Education rules in Effect as of July 2005."

C. Problem areas noted by the Office of Disciplinary Counsel

Judge Foley reported that he spoke with Carole Richelieu who commented that the ODC sees 4 problem areas:

1. Financial recordkeeping
2. Practice management
3. Relationships, such as the attorney's relationship with his/her client; with the Court; with witnesses (such as the harassment of)
4. Ethics

D. Responses from the Trial Judges Association

Inquiries were sent to approximately 76 judges, and three responses were received. From the three responses, these are the problems mentioned:

1. Civility concerns - courtesy to the court and other attorneys
2. Training in the rules of evidence
3. Citing of unpublished opinions
4. Timeliness in appearances before the court
5. Notification to the court of possible settlements, continuances, etc.

E. Professionalism

What is professionalism? That definition is being examined. It was discussed that the professionalism course that the HSBA offers to new admittees could not be given to the entire bar if it was made mandatory without significant additional resources, because of the logistics and costs of administering such a course to such a substantial audience.

It was commented that it is unknown at the moment whether ethics has priority over competence. Regarding civility and timeliness, which were areas of concern noted by the three judges who responded to Judge Foley's inquiry, it was agreed that to the extent judges permit incivility in proceedings and allow repeated instances of tardy appearances and/or filings, it will occur. There was a discussion regarding the use of fines in order to police attorneys but no consensus was reached on whether that should be an initial or last resort response. It was discussed that judges need to create an atmosphere in each of their courtrooms that promotes a higher level of practice. Regarding the problem of non-compliance with HRAP Rule 28(b), the planned efforts to conduct training on appellate practice on each island were seen as an appropriate response that should possibly be considered in other areas.

It was discussed that different offices and agencies have different responsibilities and that there is no easy fix. An inquiry was raised whether it would be feasible to have mandatory continuing legal education through the various HSBA Sections, that is, to mandate that attorneys become members of a particular Section and require that they take requisite courses through the Sections. It was concluded that this approach would not be feasible because of the discrete practice areas of the law. While some sections are narrowly focused (e.g. Family Law), others are not (e.g. Government section). For example, while the Public Defender and Prosecutor offices are engaged in criminal practice, many government attorneys working for the attorney general or the corporation counsel are engaged in civil law practice.

At this stage, it is still a question whether continuing legal education should be made mandatory. It is anticipated that the committee will have another meeting to discuss further actions that should be taken.

2005 HSBA CLE SEMINARS

Date	Programs	# of Attendees
January 28	It's the Law: What Nonprofits Need to Know Manual (4 th Edition) Seminar	57
February 9	Legal Series: Alternative Dispute Resolution	4
February 16	Legal Series: Federal Practice & Procedures	15
February 23	Legal Series: Basic Real Estate	21
February 24	Arbitration Law for Transactional	19
March 3	An Overview of the Scope of the Attorney General's REAL PROPERTY-RELATED PRACTICE	23
March 9	Legal Series: Summary Possession	20
March 15	Arbitration Law for Litigation	48
March 16	Legal Series: Estate Planning	26
March 30	Legal Series: Civil Litigation	40
April 6	Legal Series: Family Law	31
April 13	Legal Series: Bankruptcy	38
April 20	Legal Series: Choice of Business Entity – From a Tax Attorney's Perspective	38
April 27	Legal Series: Collection Law	49
May 4	Legal Series: Probate	45
May 11	Legal Series: Labor and Employment Law	46
May 21	Hawaii Professionalism Course for New Admittees	83

2004 HSBA CLE SEMINARS

Date	Program	# of Attendees
January 30	FREE CLE: Current Case Law - Kona	12
February 12	Court ADR: Program and Practice Issues and Tips for Courts, Mediators and Attorneys	18
March 5	Protecting Your Assets While Restoring Community to Community Associations	62
March 31	FREE CLE: Circuit Court Motions Practice	44
April 6	Bringing Peace into the Room: How the Personal Qualities of the Mediator/Settlement Judge Impact the Mediation/Settlement Conference Process	41
May 5	FREE CLE: Finding and Working With the Right Expert	35
May 19	Brown vs. Board of Education at 50: Still Mightily Discouraged?	35
May 22	Mandatory Professionalism Course for New Admittees	59
July 14	HIPAA Program	91 4 web
July 28	Real Property & Business Law Legislative Update 2004	91
July 28	Federal District Court Practice & Procedure	60
Sept 9	Basic PowerPoint for Litigators	15
Sept 10	Advanced PowerPoint for Litigators	11
Sept 18	Trial Academy (2-day Program)	52
Sept 29	Free CLE: Legislative Update 2004	14
Oct 2	Trial Academy (continued)	52

Oct 29-30	Bar Convention Mandatory Professionalism Course for New Admittees Planning to Win Guardianship & Capacity Emerging Environmental & Land Use Hot Topics in Litigation Real Property Program Annual Divorce Law Update Impact of HIPAA on Your Practice	700
November 5	Revised Hawaii Rules of Civil Procedure Regarding Discovery (Effective July 1, 2004)	62
Dec 9	FREE CLE: Malpractice Prevention Seminar	36

2003 HSBA CLE SEMINARS

Date	Programs	# of Attendees
January 10, 2003	Amendments to Local Rules of Practice for the United States District Court for the District of Hawaii	253
May 2, 2003	FREE CLE Malpractice Prevention Seminar: Acceptable Lies? The Ethics of Negotiation and Legal Duties of Disclosure	72
July 22, 2003	Real Property and Business Law Legislative Update 2003	140
September 25, 2003	PowerPoint	15

*Database crashed

2002 HSBA CLE SEMINARS

1.	PowerPoint (January 31)	10
2.	Malpractice (March 8)	115
3.	Collection Law (May 10)	90
4.	PowerPoint (May 15)	12
5.	PowerPoint (May 16)	3
6.	PowerPoint Package (both)	10
7.	Business Leg. Update (July 8)	86
8.	Real Property Leg. Update (July 18)	150
9.	Professionalism Course (May 25)	66
10.	Professionalism Course (Nov. 16)	138
11.	Bar Convention (Oct. 17 – 19)	400
	Hot Topics in Litigation	
	Corporations	
	Elder Law/Medicaid	
	Natural Law	
	Employment & Labor Law (2-1/2 days)	
	Commercial	
	Uniform Arbitration Act	
	Divorce	

2001 HSBA CLE SEMINARS

Date	Programs	# of Attendees
June 14, 2001	What a "Dirt Lawyer" Needs to Know About the New UCC Article 9	151
July 19, 2001	Real Property Legislative Update	151
July 24, 2001	Landlord-Tenant Law Seminar	87
November 20, 2001	Annual Real Property Litigation Update	111

2000 HSBA CLE SEMINARS

Date	Programs	# of Attendees
January 11, 2000	Hawaii Rules of Civil Procedure and Hawaii Appellate Rule Changes Seminar	236
March 24, 2000	Restatement of the Law of Property, Third, Servitudes	178
April 19, 2000	Bankruptcy Law Update for Non-Bankruptcy Practitioners	85
July 13, 2000	2000 Legislative Updates – Real Property Legislative Update	134
July 20, 2000	2000 Legislative Updates – Business Law Legislative Update	100
September 19, 2000	Annual Estate Planning Seminar	109
September 27, 2000	Conveyance Manual Seminar	102
November 1, 2000	Annual Real Property Litigation Update	101
November 2, 2000	Major Amendments to Federal Rules of Civil Procedure and Evidence	219

1999 HSBA CLE SEMINARS

Date	Programs	# of Attendees
April 29, 1999	Bankruptcy Law for Non-Bankruptcy Attorneys	136
July 15, 1999	Real Property Legislative Update	144
July 22, 1999	Business Law Legislative Update	110
September 21, 1999	Estate Planning Seminar	107
October 13, 1999	The Hawaii Motor Vehicle Collision Manual & American Bar Association Tips Seminar	83
October 21, 1999	Annual Real Property Litigation Update	113
November 9, 1999	New Family Court Rules & 1999 Divorce Manual	160

1999 Playing the Game Seminar Counts

Date	Programs	# of Attendees
August 17	Creating a Balance	
June 15	Rainmaking, the Basics for the New Attorney	
April 20	Exploring your Options	8

2000 Playing the Game Seminar Counts

Date	Programs	# of Attendees
August 22	Civility in the Practice of Law	
November 16	What Your Partners Expect From You	

2001 Playing the Game Seminars

Date	Programs	# of Attendees
August 21	Rules of Professional Conduct on Solicitation	23
May 1	Tips from Judges for Young Practitioners	

2002 Playing the Game Seminars

Date	Programs	# of Attendees
February 28	Financial Planning for Young Professionals	14
April 30	Finding and Sustaining "Balance" as a Young Lawyer	12
June 13	District Court Practice: Tips and Pointers	37
November 6	The Real World: Becoming A New Partner	10

2003 Playing the Game Seminars

Date	Programs	# of Attendees
March 20	Dress Smart	25
May 30	Administrative Hearings: What Every Young Lawyer Should Know	31
August 6	Questions of Life: Chicken Soup for the Soul (WHBA)	35
October 15	Doing Legal Research On the Internet – Without Westlaw or Lexis	51
November 6	Everything You Need to Know About Municipal Ordinances	6

2004 Playing the Game Seminars

Date	Programs	# of Attendees
March 31	Circuit Court Motions Practice	44
May 5	Finding and Working With The Right Expert	25
July 28	Federal District Court Practice & Procedure	

2005 Playing the Game Seminars

Date	Programs	# of Attendees
May 5	Making Jury Selection Work For You	

1999 Practice Management Seminars

Date	Programs	# of Attendees
February 26	Managing (The inside of) Your Business: People, Paper & Systems	
April 16	Dodging the E&O Bullet (?)	
June 25	Technology: Hardware (?)	
August 26	Case Management/Time & Billing	
September 24	Internets for Idiots I	
October 29	Internets for Idiots II	

2000 Practice Management Seminars

Date	Programs	# of Attendees
February 23	Internet for Idiots I	
April 12	Office Management and Marketing	15
May 31	Advanced Internet II	20
July 19	Software/Hardware	12
August 30	Liability Proofing your Office	15
September 29	Investment Workshop	
October 25	Recent Developments in Office Technology	

2001 Practice Management Seminars

Date	Programs	# of Attendees
May 23	Advanced Internet and Technology Training	31
March 21	Basic Internet and Law Office Technology	15
April 18	Effective Law Office Management and Marketing	
October 17	Liability Proofing your Law Office	17
September 25/July 18 (?)	Technology Tips and Law Automation Options	

2002 Practice Management Seminars

Date	Programs	# of Attendees
March 6	The Paperless Office	30
May 9	Meditation for Lawyers	14
August 28	Technology Tips & Law Office Automation Options	8
September 13	The Paperless Office (KAUAI)	11
September 24	The Paperless Office (HILO)	43
October 10	Liability Proofing Your Law Office	10
November 7	Technology Tips & Law Office Automation Options (KAUAI)	10
November 8	Effective Law Office Management Practices	6

2003 Practice Management Seminars

Date	Programs	# of Attendees
February 18	Empower Yourself to Create, Keep & Enjoy Your Wealth	8
April 16	Solo Handbook 1 – Introduction to Starting Your Own Practice	12
May 2	Solo Handbook 2 – Technology for Solo Practitioners or Small Offices	6
August 27	Solo Handbook 3 – Employment Issues and Office Policies	15
September 17	Solo Handbook 4 – How Do I Keep Clients	9
October 1	Solo Handbook 5 – How Do I Collect My Fees?	10
October 8	Solo Handbook 6 – How Do I Organized My Work	18
November 14	Solo Handbook 3 – Employment Issues and Office Policies	5

1999 Lawyer Kokua Seminars

Date	Programs	# of Attendees
May 5	Discovery Process in State and Federal Court	
June 22	Land Survey: Function & Interpretation	
July 28	Marketing Yourself: Your Professional Image	

2000 Lawyer Kokua Seminars

Date	Programs	# of Attendees
May 4	The Shift from a Master Calendar System to an Individual Calendar	42
July 11	What's Up with Worker's Comp: Recent Legislative Changes	37

2001 Lawyer Kokua Seminars

Date	Programs	# of Attendees
April 10	Practical Advice from Judges	30
August 1	A Legislative Update on Key Bills and Measures Recently Passed and Signed Into Law	30

2002 Lawyer Kokua Seminars

Date	Programs	# of Attendees
March 21	FREE CLE: The Demise of the Art of Lawyering	50
May 23	Legislative Update	16
July 25	Civil Administrations Judge Panel	18
July 31	FREE CLE: DUI Update & Discussion	

August 20	FREE CLE: Documentary & Testimonial Evidence	
September 20	Federal District Court Rules & Procedures	
September 26	Criminal Administrations Judge Panel	
October 10	FREE CLE: The Role of the U.S. Attorney in Hawaii	
October 16	Federal District Court Rules & Procedures	

2003 Lawyer Kokua Seminars

Date	Programs	# of Attendees
May 30	Judicial Independence and Judicial Selection Process	10
June 19	FREE CLE - Family Court Tips and Things You Need to Know When You Appear Before Judge Auna	21
September 24	How Computer Evidence Discovery Can Help You Win Your" Case	50

2004 Lawyer Kokua Seminars

Date	Programs	# of Attendees
January 30	Current Case Law" (W.Hawaii)	12
September 29	Legislative Update 2004	14

2005 Lawyer Kokua Seminars

Date	Programs	# of Attendees
June 23	Motions Practice: Practical Tips for Associates	

Appendix

“E”

HAWAII SUPREME COURT COMMISSION ON PROFESSIONALISM

OCTOBER, 2005 SURVEY INFORMATION

Entity: The William S. Richardson School of Law, University of Hawai'i at Manoa
(Law School)

Persons interviewed: Carol Mon Lee (Associate Dean)
Laurie Ariel Tochiki (Assistant Dean of Student Services)

Information:

The Law School is dedicated to building a community of ethically responsible professionals. Initially, the Law School attempts to "weed out" applicants who present potential character issues. The Application Form requires the applicant to disclose, among other things, discipline for misconduct by a university or professional organization, suspensions, criminal convictions, pending criminal charges, and less than honorable discharge from the armed forces. A copy of question 23 is appended. Unless the applicant can provide a satisfactory explanation, the applicant will be denied admission.

Upon admission, first year and pre-admission students are required to attend a three-day Orientation Program, which includes introduction to ethical and professionalism issues. Examples are: (1) a presentation by a representative of the Board of Bar Examiners concerning the character and fitness requirements for admission to our Bar, and the student's duty of continuing obligation to disclose any specified misconduct; (2) a speech by Chief Justice Ronald T.Y. Moon before administering the Law Student's Pledge, which specifically refers to the importance of integrity, professionalism, and civility (a copy of the Pledge is appended); (3) visits to several state and federal courtrooms where the presiding judges' presentations usually

include advice about the importance of building a reputation for integrity and civility; (4) a presentation by Volunteer Legal Services Hawaii regarding the importance of pro bono service in general, and the Law School's graduation requirement of sixty hours of law-related pro bono service; and (5) a presentation by the Attorneys and Judges Assistance Program concerning the availability of the Program's services for students with addiction issues.

The importance of law students maintaining high ethical standards and civility in the Law School and throughout their legal careers is emphasized throughout the students' tenure at the Law School. Successful completion of a three-credit course in "Professional Responsibility" (currently taught by Professor Randall W. Roth) is required for graduation. Appended is a copy of the Course Materials and Reading Assignments. In addition to the course in Professional Responsibility, the Law School teachers generally include discussion of issues involving ethics and professionalism in their teaching of substantive law. It should also be noted that the Law School is in the process of more formally analyzing how ethics and professionalism are taught across the curriculum at present. Ethics and Professionalism issues are also discussed in the numerous clinical programs which provide hands-on experience in the practice of law. A copy of the list of current clinical courses offered is appended.

It should also be noted that the Law School's Student Handbook also addresses ethical and professionalism issues. Examples are: (1) the Policy on Plagiarism and (2) Disciplinary Regulations. Copies of both examples are appended.

23. Please answer the following questions either "yes" or "no." If your answer is "yes" to any question, attach a separate statement giving full details.

- (a) Have you ever been suspended, expelled, dismissed or required to withdraw from any college or university for academic reasons? Yes _____ No _____
- (b) Have you ever been disciplined for misconduct (e.g., suspended, dismissed, placed on social probation) by any college or university? Yes _____ No _____
- (c) Have you ever been convicted of a crime (other than a minor traffic violation but including DUI, DWI, etc.)? Yes _____ No _____
- (d) Are there criminal charges pending against you or are you presently under investigation for a crime of any kind? Yes _____ No _____
- (e) Have you ever been discharged or dismissed from the armed forces other than by honorable discharge or sentenced in a court-martial proceeding? Yes _____ No _____
- (f) As a member of any profession or professional organization, have you ever been disciplined for misconduct? Yes _____ No _____

William S. Richardson School of Law

LAW STUDENT'S PLEDGE

I, _____, in the study of law,
will conscientiously prepare myself;

To advance the interests of those I serve before my own,

To approach my responsibilities and colleagues with integrity,
professionalism and civility,

To guard zealously legal, civil and human rights
which are the birthright of all people,

And, above all,

To endeavor always to seek justice.

This I do pledge.

Professional Responsibility

Professor Randall W. Roth

Fall 2005

Schedule: 8:30 to 9:45 a.m., TTh, CR2

Course materials: Lerman & Schrag, "Ethical Problems in the Practice of Law" (Text) and Rotunda, "Professional Responsibility" (Outline), plus the Model Rules of Professional Conduct (Model Rules) and Hawaii Rules of Professional Conduct (Hawaii Rules). The Model Rules can also be found beginning on page 423 of the Outline. Rules of professional conduct for other states can be found at American Legal Ethics Library. Whenever the Text refers a section of the Model Rules, consider that rule and related comments to be part of your reading assignment. Additional websites that you might want to view at some point in time include the Rules of the Hawaii Supreme Court, Hawaii Ethics Advisory Opinions, and Hawaii Code of Judicial Conduct.

The Course: As suggested by the name "Professional Responsibility," this course is about responsibilities that accompany membership in the legal profession. Some law schools call it "The Law of Lawyering" to convey that ours is a regulated industry with its own set of laws. Others call the course "Legal Ethics" to stress the moral dimension. By whatever name, this course and the assigned reading materials have the potential to help you immensely in your efforts to (1) do well on the MPRE and Hawaii bar exam, (2) recognize and deal with real-life ethical/regulatory issues early enough to avoid major problems, and (3) enjoy your professional life more than otherwise would be possible. Like most things in law school and life, what you get out of this course will depend primarily on what you put into it.

Grading and Course requirements: This Credit/No-credit course is required for graduation. To receive credit, you must attend regularly, participate fully, and achieve a minimum score on a multiple-choice exam similar to the MPRE. Anyone with more than two unexcused absences will not receive credit for the course. Only Dean Lee decides what is "excused," and the request must be made in a timely fashion. To be counted as being in attendance for any given session, you must either be there when class begins or request, in person or via email sent that same day, to be added to the list. When responding to such requests, I promise to be at least as reasonable and understanding as will be the judges, senior partners, and clients with whom you will be interacting during your legal career.

MPRE: The Multistate Professional Responsibility Examination (MPRE) consists of 50 multiple-choice questions that test your knowledge of the standards of conduct for the legal profession. Information packets can be obtained from UH law administration or directly from MPRE. We will discuss in class the question of when is the best time to take the MPRE. I anticipate that most of you will choose to take it on November 4 even though the course will not yet have ended.

My availability: I can usually be found in my office. If the door is closed, just knock. I also have posted office hours during which time the door should be open. Feel free to stop by anytime, or to make an appointment. Either is fine with me. You can call me at the office (956-7386), at home (735-1631), or on my cell phone (561-1631). I also will be in the classroom approximately 10 minutes before the start of each class, and 10 minutes afterward.

Email: My email address is rroth@hawaii.edu. I encourage you to ask questions and make comments via email (in addition to other forms of communication). I try to respond to email immediately, and almost always manage to do so within 24 hours.

Syllabus subject to change: I will announce significant changes in class and keep a current copy of the syllabus available at the MyUH page for this course, along with other odds and ends.

Reading Assignments

Date	General Areas to be Covered	Text Pages
Aug. 23	Introduction; Institutions that regulate lawyers	1-30
25	Law Governing Lawyers; Bar admissions	32-57
30	Misconduct during law school; Professional discipline	57-80
Sept. 1	Reporting misconduct	80-108
6	Confidentiality and the exceptions	109-128
8	Confidentiality and more exceptions	128-154
13	Even more exceptions; Attorney-client privilege	154-176
15	More on privilege; Work-product doctrine	176-201
20	Lawyer-client relationships; Competence	203-231
22	Honesty, Communication and Diligence; Control	231-256
27	Clients with diminished capacity; Terminating a lawyer-client relationship	256-278
29	Concurrent conflicts of interest	279-301
Oct. 4	Current clients	301-322
6	Joint representations	322-341
11	Successive conflicts; Imputation	343-363
13	Continuation	363-384
18	Conflict issues for gov. lawyers, judges, law clerks, arbitrators and mediators; Prospective clients	384-408
20	Conflicts of interest between lawyers and clients; Legal fees; hourly billing	408-440
25	Fees, concluded; Other conflicts between lawyers and clients	441-464
27	Gifts; Sex; Custody of client property; Duties to courts, adversaries, and others	464-489
Nov. 1	Candor to tribunals	489-510
3	Opportunity to take final exam early	

8	Candor to tribunals, continued	510-533
10	Improper influence; ADR proceedings; communications with others	533-552
15	Deception of third parties; contact with third parties and unrepresented persons	553-577
17	History of the legal profession	577-610
22	The ethical climate of the legal profession today	610-629
24	No Class – Thanksgiving!	
29	The provision of legal services; UPL; Advertising and solicitation; Interstate practice; MDP	631-659
Dec. 1	Indigent persons; Civil legal aid; Fee shifting statutes; Pro bono services	659-694
12	Final Exam 9 a.m.-12 noon	

CURRENT CLINICAL COURSES

Defense Clinic

Elder Law Clinic

Environmental Law Clinic

Estate Planning Workshop

Family Law Clinic

Immigration Law Clinic

Lawyering Skills Workshop

Legal Aid Clinic

Mediation Workshop

Native Hawaiian Rights Clinic

Negotiation and Alternative Dispute
Resolution

Pretrial Litigation Clinic

Prosecution Clinic

Real Estate Development Workshop

Trial Practice Clinic

University of Hawai'i at Mānoa
William S. Richardson School of Law

Policy on Plagiarism

(July 2004)

Each student should make it a practice to read the school's policy on plagiarism on a regular basis and before commencing all writing courses and special projects including Legal Methods Seminar, Appellate Advocacy, Second Year Seminar, Moot Court Team, and Law Review. You will be assumed to be familiar with its contents and held accountable for any violations.

Plagiarism is serious business, particularly in law schools. The Internet has created new temptations, as well as an additional means for detecting plagiarism. Learning what plagiarism is and how to avoid it makes sense for at least two reasons: ethical and practical. The Code of Professional Responsibility, which sets forth the ethical norms (some aspirational and some mandatory) by which lawyers are expected to conduct their professional affairs, does not specifically mention plagiarism. But, Rule of Professional Conduct 8.4 (c) states that "[i]t is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." It should be obvious that a law student who, under pressure of deadlines, "borrows" without attribution language and ideas from others might also have no qualms about "borrowing" other, more tangible things once in practice. Law schools are duty-bound to do all they can to ensure a firm moral grounding for all potential lawyers.

On the practical side, the key to a successful legal argument is the ability to convince the listener (be she judge, client, or opposing counsel) there is a sound legal and factual basis for the position you are advocating. If your argument lacks citation, or if the citations are inaccurate, the listener will not be swayed. Even in cases where your argument is at the cutting edge of the law and advocates a new direction, contrary to existing law, the listener must be brought gradually to that eventual leap of faith along a comfortable path well-marked by citation to existing authority.

The definition of plagiarism used by this law school is a simple one:

The submission or presentation of any work, in any form, that is not a student's own, without acknowledgment of the source. A student must not appropriate ideas, facts or language from the work of another without proper use of quotation marks, citation or other explanatory insert. Regardless of intent, the failure to properly acknowledge the use of another's work constitutes plagiarism.

Given the gravity of the offense, the sanctions imposed through the Student Conduct Code can be severe: an "F" in the course and, perhaps, even expulsion from law school.

Excuses That Won't Work

I can't even spell playgarism (sic), how should I know what it means?

I never learned this stuff in undergraduate school.

But this was just my first draft, you know I would never hand in a final draft like this.

I was so far behind on the whole thing, I just threw it together late last night and fully intended to go back later and "clean" everything up.

The law review articles I read all talked about the same suggestions for reforming the law and besides, it was so common sense that anyone, even me, could have come up with the same ideas if only I would have had the time.

Everyone does it, why are you singling me out?

I cited that article on page 5, so it's not like I was trying to hide the fact that the (uncited) materials on pp. 35-40 were taken from the same source. Why do I have to keep on citing to the article? It's a waste of time.

But I thought if I changed one word in five . . .*

Well, I haven't read the cases, but they were in a law review footnote . . .*

Everyone knows the court said that and not me . . .*

I don't need quotation marks if I use ellipses and brackets . . .*

The idea came from the law review article, but I wrote every word of the paper myself.*

*Taken from "Plagiarism: Pilfered Paragraphs," The Second Draft, 8.2 (April 1993).

Common Problems/Solutions

A. The "borrowed" footnote.

Law review articles are infamous for the number of footnotes they include. Among devotees of this art there is a story, no doubt apocryphal, about a law review article with one line of text accompanied by seventy pages of footnotes.

Suffice it to say, footnotes in law review articles can be an excellent source of footnotes or even text for your own paper. It is not necessarily unethical to take advantage of this gold mine of information, but steps should be taken to avoid even the appearance of plagiarism. As a further note of caution, even in the best of journals, footnotes are not always accurate. All "borrowed" citations should be checked for accuracy (both the citation format and to be sure the cited case/article stands for the proposition for which it is being cited, and that the law has not subsequently changed).

Examples

- (1) You are doing a paper on a family law issue. Footnote 37 of a law review article lists the 38 states that have a similar provision regarding adoptions. You want to include this info in your paper. Do you cite the law review footnote? Absolutely, this is research they did, not you. Do you review the statutes of all 50 states to confirm that the original footnote was correct? If the information is important to your thesis and/or you plan to publish your article in a law review, absolutely yes. If the information is peripheral, probably not, but you might want to add some qualifying language like, "according to there are 38 states with similar provisions..." rather than just a simple cite to the footnote number.
- (2) Footnote 115 cites a line of cases on an issue peripheral enough to your topic that you don't want to discuss them in the text of your paper, but you feel the reader might find them of interest. You must acknowledge that it was the law review author, not you, who found these cases. Depending upon the circumstances, you might also want to check them to be sure the citations are accurate and that they stand for the proposition for which they are being cited.
- (3) Footnote 149 cites a 1994 Ohio case for the proposition that there is at least one recent state appellate court decision holding that any law school graduate may pursue an educational malpractice claim against their former law school professors if the graduate is ever sued by a client for attorney malpractice. Guess what: (1) the citation was inaccurate, it was a 1884 case; (2) the holding was expressly limited to non-ABA accredited law schools; and, (3) there is a 1968 case from the same court that holds the earlier decision is no longer valid. Don't be surprised; law review editors are only human and they too make mistakes (except at UH). By borrowing the footnote without checking its accuracy you have inadvertently damaged the credibility of your own paper. If you are going to use the cite, check it first.

B. Quote/Paraphrase/Your Own Words

When is a quote (rather than a paraphrase) appropriate? This is partially a question of style, but as a general rule of thumb quotes should be used when you feel that the language used by the author is so well crafted that to even slightly tinker with it would destroy its impact. Similarly, in those rare moments when a court is able succinctly to sum up its holding (or even dicta) in a line or two, this is powerful language to raise before your own judge.

Examples

- (1) You are comparing four recent U.S. Supreme Court decisions all of which have detailed fact patterns that must be discussed in some detail in order for you to distinguish them from your case/fact pattern. Do you quote the fact patterns word for word, closely paraphrase them (with footnotes, of course), or what? This is more a question of style than plagiarism. It will probably take some time, but you should still be able to digest the fact patterns and state them in your own words and not have to footnote every line of your paper. Any unique descriptive terms used by the courts, should, of course, be cited.
- (2) You need to discuss the reasoning by the courts in a line of cases. There are one or two law reviews that already do this. Do you quote/paraphrase or what? As with the preceding paragraph, this is more a problem of style than plagiarism. You would still, however, want to have at least a general footnote to the articles so a reader could know that others have discussed the same line of cases. The closer you find yourself following the articles' discussion, the more you will want to be citing to the articles with more regularity throughout your discussion. For example, you might find yourself unconsciously following the format one of the articles used in its discussion, i.e. the order in which it addressed the issues. If this, in turn, is simply a mirroring of the courts' format, there is probably not a problem.

In order to provide further assistance in defining plagiarism, attached are two documents "Avoiding Plagiarism in Law School: A Law Student's Guide to Sources and their Acknowledgement" copied from an article by Robert Brill, "Plagiarism in Law School: Close Resemblance of the Worst Kind?" 31 Santa Clara Law Review 1990, 103-146, and "Using Examples to Illustrate Plagiarism" taken from Volume 8.2 (April 1993) of The Second Draft, the Bulletin of the Legal Writing Institute. These are full-text (retyped) copies from recent materials discussing plagiarism in law schools.

AVOIDING PLAGIARISM IN LAW SCHOOL:
A LAW STUDENT'S GUIDE TO SOURCES
AND THEIR ACKNOWLEDGMENT¹

Plagiarism is the submission or presentation of any work, in any form, that is not a student's own, without acknowledgment of the source.² A student must not appropriate ideas, facts or language from the work of another without proper use of quotation marks, citation or other explanatory insert.³ *Regardless of intent*, the failure to properly acknowledge the use of another's work constitutes plagiarism.⁴

Plagiarism is considered by many to be one of the most serious offenses that can be committed in an academic community⁵ and may reflect upon an individual's moral fitness to practice law.⁶ The failure to acknowledge sources violates the code of scholarly ethics, and ironically, may also indicate one's anxious and abject dependence upon them. Plagiarists, in effect, forfeit the opportunity to do their own original work.

A law student charged with plagiarism is subject to disciplinary action which may include a failing grade, loss of course credit, suspension or expulsion, and notification to the Committee of Bar Examiners in every state where the student intends to practice law.

Many entering law students erroneously believe that plagiarism can occur only in a class

¹ Title and text adapted with permission from Dartmouth College, *SOURCES: THEIR USE AND ACKNOWLEDGEMENT* (1987).

² Although there is no universal definition for plagiarism utilized by every law school, the majority share common elements. *See, e.g., Notre Dame Law School Honor Code* § 3.01(b), "To submit as one's work the work of another," University of South Carolina, School of Law, *Code of Academic Responsibility*, Art. III, §1(d), "[T]he act of taking the idea writing, or work of another and presenting it as the product of one's own activity, whether in whole or in part;" University of Oklahoma, College of Law, *Code of Academic Responsibility*, § 201(b)(vii), "[T]he incorporation of written work, either word for word or in substance from any work of another, unless the student writer credits the original author and identifies the original author's work with quotation marks, notes, or other appropriate written designation."

³ *See* Western State University Honor Code §201(b)(9). *See also* Southern Methodist University, School of Law, *Code of Professional Responsibility*, Art. III, §A(2)(1982).

⁴ *SOURCES: THEIR USE AND ACKNOWLEDGEMENT*, *supra* note 1, at 7.

⁵ *See* Kolich, *Plagiarism: The Worm of Reason*, 45 C. ENG. 141 (1983); *see also* Mawdsley, *Plagiarism Problems in Higher Education*, 13 J.C. & U.L., 65 (1986).

⁶ *See, e.g., In re Lamberis*, 93 Ill. 2d 222, 443 N.E.2d 549 (1982); *but see* Rhode, *Moral Character as a Professional Credential*, 94, YALE L.J. 491, 518-37 (1985).

paper or law review article, and then only by an explicit intent to deceive. Plagiarism can occur *whenever* one makes use of the ideas or work product of another without including an appropriate citation, and applies to *every* type of work encountered in law school: essays, law review articles, case briefs,⁷ pleadings and legal memoranda for class credit, homework, and examinations. Plagiarism is possible with any formal work performed in any medium.

Many forms of inadvertent plagiarism are caused by poor research habits. Law students should cite sources not only in a final draft, but also in all preliminary notes for any project. The accurate use of quotation marks is essential to good notetaking, and will avoid the unfortunate consequences that result from mistakenly assuming that one's notes are in one's own words. A working knowledge of the rules contained in *A Uniform System of Citation*⁸ will facilitate this practice.

A. *Examples of Plagiarism*

Following these excerpts from the late Professor Fred Rodell's famous lampoon of legal literature⁹ are typical examples of plagiarized work:

[T]he explosive touch of humor is considered just as bad taste as the hard sock of condemnation. I know no field of learning so vulnerable to burlesque, satire, or occasional pokes in the ribs as the bombastic pomposity of legal dialectic. Perhaps that is the very reason why there are no jesters or gag men in legal literature and why law review editors knit their brows overtime to purge their publications of every crack that might produce a real laugh. The law is a fat man walking down the street in a high hat. And far be it from the law reviews to be any party to the chucking of a snowball or the judicious placing of a banana peel. Occasionally, very occasionally, a bit of heavy humor does get into print. But it must be the sort of humor that tends to produce, at best, a cracked smile rather than a guffaw. And most law review writers, trying to produce a cracked smile, come out with one of those pedantic wheezes that get an uncomfortably forced response when professors use them in a classroom. The best way to get a laugh out of a law review is to take a couple of drinks and then read an article, any article, aloud. That can be really funny.¹⁰

⁷ In some law schools the mere possession of "canned briefs" (e.g., *Legal Lines or Casenotes*) on campus subjects a student to suspension or dismissal. See, e.g., Western State Univ., Admin. Rule 7 (1989). Recitation of a canned brief as one's own synopsis of a case may also constitute plagiarism under a strict construction of the term.

⁸ HARVARD LAW REVIEW ASS'N, *A UNIFORM SYSTEM OF CITATION* (14th ed. 1986).

⁹ Rodell, *Goodbye to Law Reviews Revisited*, 48 VA. L. REV. 279 (1962).

¹⁰ *Id.* at 281.

1. *Example 1*

Plagiarism by unacknowledged direct quotation or word-for word transcription from source:

In legal writing an *explosive touch of humor* is considered to be in *bad taste*, and is *perhaps the very reason why there are no gag men in legal literature*. Law review editors work overtime to purge their publications of humor, but *occasionally a bit of heavy humor* escapes their scrutiny.

Note that this paragraph duplicates Professor Rodell's passage with only a slight rearrangement and restatement, and without using appropriate quotation marks or citation at the end.

2. *Example 2*

Plagiarism by mosaic, or, mixing paraphrase and unacknowledged quotation from source:

Jokes in literature are *considered to be in bad taste*, perhaps due to the genre's extreme *vulnerability to satire*. The law reviews work *overtime* to remove obnoxious levity and the snippets of humor that remain are often little more than *pedantic wheezes*. Sometimes, the only way to get a laugh out of legal writing is to *take a drink then read aloud*.

Note how in this case the plagiarist intermingles his own original writings with unmarked experts and phrases drawn directly from Professor Rodell, adopts the ideas of the original author, and again fails to provide any citation.

3. *Example 3*

Plagiarism by paraphrase and/or use of ideas:

Drollery is unwelcome in legal literature. The few authors who gingerly attempt to elicit a smile, and escape their editor's overzealous attempts to preserve the sanctity of the publication, are generally rewarded with little more than a wry smile. Humorists need not apply as legal writers:

Note that although this excerpt does not make literal use of Professor Rodell's paragraphs, it nevertheless draws its ideas from them without any acknowledgment and thus constitutes an act of plagiarism of equal severity as the two preceding examples.

B. *When to Cite Sources*

Although scholars of various disciplines differ on when to cite and not to cite sources, most

follow the basic principle that a citation is required to any source of a direct quotation, paraphrase, fact or idea. Lawyers, finding the bare assertion of a legal theory without authority to be less than useless, reduce the principle to its elemental form, "*cite everything!*"¹¹ Winning a case for one's client requires that a court be persuaded that statutory or case authority demands the requested ruling. A court will not take a lawyer's word for it, or give credence to his opinion that the law is what he says it is. A court must know which authority. Therefore, "[l]awyers cite the law."¹²

This citation principle may be divided into six basic rules. The first two cover direct quotation, paraphrase and summary of language, facts and ideas. The third considers information that may be regarded as "common knowledge." The fourth, often considered a recommendation rather than a strict rule, asks for citations to sources that supply different or additional views on the same or related topic that the reader might find relevant or helpful.¹³ The fifth rule specifies citations to sources that cannot be defined as written texts, including such materials as public lectures, recordings, films, graphs, statistical tables and computer data. An additional rule, addressed in legal writing courses, requires citation to all sources relied upon for authority to support any legal proposition or rule. The proper format for each required citation will be found in *A Uniform System of Citation*,¹⁴ better known as the "Harvard Bluebook."

1. *Cite sources for all direct quotations.*

There is no exception for this rule since scholars, judges and other lawyers expect to know the original source of every quotation whether for the purpose of simply finding it there, checking for accuracy, or when appropriate, perhaps using it in their own work.¹⁵

2. *Cite sources from which language, facts, or ideas have been paraphrased or summarized.*

A paraphrase requires the same citation as a quotation. This rule helps avoid a common form of plagiarism: not only paraphrasing an unacknowledged source's idea(s), but also literally adopting ("lifting") certain specific phrases or stylistic expressions without quotations marks and explicit

¹¹ See P. MERKLE & R. TALMO, LEGAL RESEARCH AND WRITING, COURSE MATERIALS 4 (1988).

¹² *Id.*

¹³ See Samuelson, *Good Legal Writing: Of Overall and Window Panes*, 46 U. PITT. L. REV. 149, 161 (1984).

¹⁴ HARVARD LAW REVIEW ASS'N, *supra* note 92.

¹⁵ There is no consensus in legal academe whether the "lifting" of quotations from a secondary source without additional citation constitutes plagiarism. It is, however, bad research methodology. One should always read quoted material in the original source.

acknowledgement of their original source. Students are cautioned to organize any summary or paraphrase in their own distinctive manner and style.¹⁶ As a general rule, each paragraph containing paraphrase material should contain a cite to the source.

A persistent and potentially dangerous myth is that plagiarism is harmless if unattributed material consists of less than one page in a typical 20-page student paper. This is not so! Although an individual instructor or school may sometimes find that a small amount of "accidental" plagiarism does not warrant formal disciplinary action, the student's work remains flawed. Not only is the non-plagiarized remainder suspect, any positive impact on the reader is lost. Such an incident of plagiarism, however "minor," may rate a failing grade from the professor and irreparably damage a student's reputation.

3. *Cite sources for idea(s) or information that could be regarded as common knowledge, but which a) was not known to the writer before encountering it in a particular source, or b) the reader might find unfamiliar.*

Less clear than the two previous rules, this third rule addressed an idea that did not originate with the writer but seems generally well known (i.e., that the federal legislature is bicameral),¹⁷ and a generally well-known idea treated as a distinctive or seldom understood concept (i.e. Judge Bork's controversial theory on the limited scope of the first amendment).¹⁸ In the first case, some legal scholars omit a citation when the idea can be found in five or more independent sources. In the second case a formal citation is always required. When in doubt, *cite the source.*

4. *Cite sources that add relevant information to the particular topic or argument propounded.*

This "rule" allows the writer to supply related or parenthetical information without cluttering the body of the paper with extraneous details. Restraint should be exercised in the use of supplementary citations. Too many will distract the reader from the flow of the argument.¹⁹

5. *Cite sources from and for other kinds of specialized materials.*

This fifth rule extends the application of the preceding four rules to other forms of work such as lectures, recordings, films, interviews, letters, unpublished manuscripts, graphs, charts,

¹⁶ Note, however, that excessive paraphrasing tends to weaken the rhetorical effect of any work.

¹⁷ A term now in common usage, originally applied by Jeremy Bentham to the division of a legislature body into two chambers. BLACK'S LAW DICTIONARY 147 (5th ed. 1979).

¹⁸ Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 26-28 (1971).

¹⁹ "Encountering a [footnote] is like going downstairs to answer the doorbell while making love. - Noel Coward." Bowersock, *The Art of the Footnote*, 53 AM. SCHOLAR 54 (1984), cited in Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1152 (1987).

tables, etc.

6. *Cite sources relied upon for authority to support any legal proposition or rule.*

Because judicial action is governed by the principles of precedent and stare decisis,²⁰ adherence to this rule not only avoids plagiarism from judicial opinions, statutes or secondary authority, it also is essential to effective lawyering. Students might sometimes feel embarrassed by writing that relies on secondary sources, and try to paraphrase a hornbook, treaties or law review without providing citations to anything but the primary authority.²¹ Not only is it obvious to an experienced reader that a student has relied on a secondary source (even without citations), the student risks a charge of plagiarism.²² Although original analysis of a court decision is always preferred, there is no shame in using a secondary source so long as a proper foundation is laid and the complete citation is given.²³

Plagiarism is easily avoided by careful research methodology and adherence to simple rules of citation. The practice of law is based upon the craft of effective writing, and law students should write often. A fear of plagiary that manifests itself in the failure to take advantage of every writing opportunity in law school is a tragedy in itself. Don't be afraid of sources, interact with them. Although some of the rules seem fraught with ambiguity, particularly when a fact or idea appears to be common knowledge, proper attribution is an absolute prevention for plagiarism. So long as a student does not represent the work of another as his own, and credited his sources, he cannot be a plagiarist. The student who also understands that a legal rule without citation is like a pen without ink has taken an important step toward effective advocacy.

²⁰ C. KUNZ, D. SCHMEDEMANN, C. ERLINDER & M. DOWNS, THE PROCESS OF LEGAL RESEARCH 52-54 (1986).

²¹ W. STATSKY & R. WERNET JR., CASE ANALYSIS AND FUNDAMENTAL OF LEGAL WRITING 418 (2d ed. 1984).

²² *Id.*

²³ *Id.*

USING EXAMPLES TO ILLUSTRATE PLAGIARISM

WAKE FOREST

To help you avoid plagiarism and learn appropriate attribution, consider the examples based on the following excerpt:

"A 'handicap' could be defined by listing certain traditionally-recognized handicapping conditions, or a legislature may choose to provide a more comprehensive list of the types of disabilities that will be considered 'handicapping conditions' in that state. These approaches are problematic, however, because they can lead to legislation that does not include certain groups of handicapped people simply because the legislature was not aware of a particular handicap."

Maureen O'Connor, Note, *Defining "Handicap" for Purposes of Employment Discrimination*, 30 ARIZ. L. REV. 633, 636 (1988).

Example 1: *The term "handicap" may be defined in general terms or a Legislator may choose to provide a more comprehensive list of the types of disabilities that will be considered "handicapping conditions" in that state.*

This example needs quotation marks around the words printed in bold, and a citation at the end of the sentence. When you quote or copy words directly from the source, you must use quotation marks and give a citation.

Example 2: *It is problematic to define a handicap by providing a list of the types of disabilities that will be covered because certain groups of handicapped people might be excluded. The legislature might simply be unaware of certain handicaps.*

This example needs a citation. If you change a few words and mix up the order of the source sentence, you must give a citation. It is permissible to paraphrase only if you give proper attribution.

Example 3: *The term "handicap" is difficult to define in a statute. Any attempt to provide a complete list of covered disabilities, however, will be inadequate; some conditions will inevitably be omitted.*

This example needs a citation because it expresses the same ideas as the source article. Unlike the first two examples, comparing the two statements side by side might not yield conclusive proof of plagiarism. But if the author of the second statement borrowed this idea from the source, a citation must be included. If you are ever in doubt, you should err on the side of giving credit, remember that a citation increases persuasiveness.

Example 4: *When defining statutory terms, legislators should not attempt to draft a complete list specifying everything the statute is intended to cover. Such lists will inevitably be incomplete; some will later make a claim that the legislators did not anticipate. Further, the statutory list may quickly become outdated.*

This example should have a citation to the source preceded by the signal *See*, pursuant to Bluebook Rule 1.2. Legal writers often build on other sources to arrive at their own analysis or conclusion. Sometimes a source may trigger a related idea. In these instances, even when there is no inference of plagiarism, citation to the original source, with an appropriate signal, should be included.

UNIVERSITY OF MISSOURI-KANSAS CITY

What follows is a two paragraph section taken directly from a law review article, Note *Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations*, 62 SO. CAL. L. REV. 1733, 1754-55 (1989) (footnotes renumbered) (emphasis in original). Then, several examples are used to illustrate how a fictional writer may use this law review article to commit plagiarism in the writing of a brief or memorandum. These examples are provided to illustrate commonly occurring instances of plagiarism so that you will avoid these usages. The examples given do not represent every possible unattributed use of another's work, but are intended to clear up confusion in some areas.

Original:

Even if the Mariel Cubans are not being "punished," their civil detention still denies them their liberty interest in being free from prolonged detention. The Fourth and Eleventh Circuit Courts of Appeal have held that excludable aliens have no liberty in freedom from prolonged detention, and therefore, are not entitled to due process of law. These courts reason that detention, even for as long as seven years, is merely a part of the exclusion process. These courts inaccurately rely on the well-settled principle that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."²⁴

The problem with these circuit court decisions is that they fail to distinguish between an alien's interest in his or her "initial admission" or "application" for admission, which in most cases has already been processed and denied, and his or her interest in being free from arbitrary and prolonged detention; these two interests are distinct. Consider that the courts have long recognized that an alien's interest in admission is distinct from his or her interest to be free from arbitrary and prolonged criminal detention, the latter of which is protected by the due process clause.²⁵ A

²⁴ *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (emphasis added). Further, at least one commentator has suggested that this principle is not well settled at all and is, in fact, incorrect. See Note, *The Measure of a Nation*, 73 VA. L. REV. 1501 (1987) (authored by Christopher R. Yukins) (Suggesting that the history of Supreme Court decision-making indicates that aliens do have an interest in admission to the United States, but that the process due is defined by those procedures which Congress has provided to an alien.

²⁵ See *Wong Wing v. United States*, 163 U.S. 228 (1986); *United States v. Henry*, 604 F. 2d 908 (5th Cir. 1979).

criminal sentence can only be handed down in accordance with the due process clause, but why aliens should only receive the protection of the due process clause after violating our laws, and not prior to civil detention, has never been satisfactorily explained.²⁶

PLAGIARISM EXAMPLE 1

Several federal appellate courts have held that excludable aliens have no liberty interest in freedom from prolonged detention and, therefore, have no due process rights.

Comment: This is plagiarism because the writer of Example 1 has used the exact words of the source's author (first paragraph, second sentence of original) without quotation marks and without attribution. Furthermore, even the paraphrase at the beginning of the sentence needs attribution.

PLAGIARISM EXAMPLE 2

In holding that the due process clause does not apply to the Mariel Cubans, the courts have failed to distinguish between two interests, the Cubans' interest in freedom from arbitrary and prolonged detention and their interest in the initial application into the United States.

Comments: This is plagiarism because the writer of the example has used the idea of another without attribution. Even the act of thorough paraphrasing does not "save" the writer. Even the thorough rewording of another's idea must be attributed to the source of that idea. The passage above uses another's idea - that the problem with the circuit court decisions is that they fail to distinguish between two distinct interests, an alien's interest in initial admission and his interest in freedom from arbitrary and prolonged detention - without attribution. Thus the author of Example 2 is creating the impression that this notion is his original idea rather than another's idea.

PLAGIARISM EXAMPLE 3

Those federal appellate courts that have denied a due process liberty interest in freedom from prolonged detention reason that prolonged detention, even for several years, is just part of the exclusion process. In so holding the federal appellate courts erroneously rely on the Supreme Court's holding that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a

²⁶ See *Jean v. Nelson*, 472 U.S. 846 (1985) (Marshall, J., dissenting). Justice Marshall presents an impassioned critique of the logic behind the Fourth and Eleventh Circuit decisions. The paradoxical nature of this distinction becomes more obvious, and less tolerable, when one considers that the conditions of the "civil" confinement are often worse than the criminal confinement, not to mention the fact that the civil confinement is open-ended. See *supra* notes 25-39 and accompanying text.

sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

Comment: This example is a typical technique that many students use without recognizing that it is plagiarism - the use of another author's words and ideas.

Here, the author of Example 3 has actually located the quote from the *Landon* case in context in the law review article. By citing to the case itself and not also the law review article, the writer is representing that he has read the case and created the context or placed the case within the context of his idea. In fact, he may have done neither. Even if the writer goes to read the *Landon* case (as he must), he must attribute the compilation or combination of this case with this idea to the author of the law review article. If he does not, he has used another's idea (the compilation) without attribution.

PLAGIARISM EXAMPLE 4

As one recent commentator has noted, these circuit court decisions are problematic because they fail to make the distinction between an alien's interest in his initial admission and his interest in freedom from arbitrary detention. *See Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations*, 62 S. Cal. L. Rev. 1733, 1754-55 (1989). The United States Supreme Court has, however, long recognized that these two interests are distinct because the freedom from arbitrary and prolonged detention in the criminal court context is protected by the Fifth Amendment due process clause. *See, e.g., Wong Wing v. United States*, 163 U.S. 228 (1986).

Comments: The writer of this example has committed plagiarism in at least two ways. While appropriately citing to the law review article after the first sentence, the writer then neglects to attribute or cite to the article again after the second sentence. The failure to attribute the second sentence to the author of the law review article creates the erroneous impression that the example writer developed this idea independently when in fact he is using the idea represented in the law review article.

The writer also has committed plagiarism as exemplified above in Example 3 by citing only to *Wong Wing* rather than to the law review article.

(ENDNOTE 11) The format for these examples is inspired by Ralph D. Mawdsley, *Legal Plagiarism* (National Organization on Legal Problems of Education 1985) (using examples from H. Bond, T. Seymour and J. Stewart, *Sources: Their Use and Acknowledgement* (Trustees of Dartmouth College 1982)).

UNIVERSITY OF HAWAII AT MĀNOA
WILLIAM S. RICHARDSON SCHOOL OF LAW

DISCIPLINARY REGULATIONS

(Revised August 2004)

Article I. School of Law Disciplinary Action

- A. Rules relating to student conduct and discipline. Students are subject both to the Student Conduct Code of University of Hawai'i, as approved in July 1992 and amended from time to time and to the rules and regulations of the School of Law, as published and amended from time to time, relating to student conduct and discipline. Each entering law student shall receive a copy of the rules and regulations of the School of Law upon matriculation. The University of Hawai'i Student Conduct Code is available through the office of the University of Hawai'i Dean of Student Services or at www.hawaii.edu/student/conduct/.
- B. Scope of disciplinary action by the School of Law. Disciplinary action by the School of Law is governed by these regulations. Such action extends to the following conduct:
1. Conduct in violation of School of Law rules or regulations. Such conduct is defined in Article II, below.
 2. Other conduct, including but not limited to conduct in violation of University of Hawai'i rules or of public law, when such conduct is not commensurate with professional standards of conduct required of lawyers. Such conduct is defined in Article III, below.
- C. Applicability. These regulations apply only to law students enrolled in an ABA approved law school program at the time the alleged violation occurred. Cases involving students from other University departments or colleges will be referred to the University's Dean of Students.

Article II. Violations of School of Law and University Rules and Regulations

- A. General rule. Any law student who violates the rules or regulations of the School of Law or the University of Hawai'i may be subject to disciplinary action pursuant to these regulations. Violations include, but are not limited to, the specific examples of School of Law rules and regulations contained in paragraph B.
- B. Specific examples. The following are examples of actions which may result in disciplinary action pursuant to these regulations:
1. School of Law Academic Regulations. Students are required to comply with the School of Law Academic Regulations. Willful or repeated failure to comply with such regulations, rules or procedures may be subject to disciplinary action.

2. Disruption of School of Law activities or operations. Conduct that disrupts or impairs School of Law or University activities or operations may be subject to disciplinary action. The kind of conduct referred to is conduct that by itself or in conjunction with the conduct of others disrupts or impairs the effective carrying on of the activity, a result that the student knew or reasonably should have known would occur.
3. Plagiarism. The definition of plagiarism by this law school is a simple one:

The submission or presentation of any work, in any form, that is not a student's own, without acknowledgement of the source. A student must not appropriate ideas, facts or language from the work of another without proper use of quotation marks, citation or other explanatory insert. Regardless of intent, the failure to properly acknowledge the use of another's work constitutes plagiarism.

All written work, whether in preliminary or final form, submitted by a student in the course of law study is assumed to be the student's own work. Anything copied or paraphrased from another author or source must be appropriately identified, acknowledged, and attributed to that source. The use of another's language or the substantial adaptation thereof without identification as a direct quotation by quotation marks or otherwise is plagiarism even though the source is cited in the student's work. Violation of the rules stated in this paragraph may subject students to disciplinary action. (See Policy on Plagiarism).
4. Examinations. Students are required to comply with the rules established for examinations, including both those established by the School of Law and those established by the instructor giving the examination. Violation of the rules set for any examination, including "take-home" examinations, may subject a student to disciplinary action. The examination rules established by the School of Law are described in full in a memorandum issued by the Assistant Dean and entitled "Policies and Procedures for Examinations."
5. Abuse of these Regulations. Any student who knowingly files a false report or complaint under these Regulations or knowingly gives false information may be subject to disciplinary action.
6. Obstructing enforcement of these Regulations. Obstructing enforcement of these Regulations is defined as any act which prevents the enforcement of these Regulations. Examples of this offense include, but are not limited to:
 - a. failure to cooperate with the Disciplinary Committee, as in:
 1. failing to appear and testify without reasonable excuse (excluding the student defendant) or produce documents or other evidentiary material before the Disciplinary Committee when requested;
 2. misrepresenting material facts before the Disciplinary Committee;

- b. failing to report any violation of these regulations by any student having reasonable grounds to believe that such a violation has occurred;
 - c. destroying evidence in order to hinder the prosecution of any complaint.
7. Misrepresentation. Misrepresentation is defined as any act or omission which is deceptive or misleading and by which a student gains or attempts to gain a benefit or advantage from the University, its faculty, staff, or students, or persons dealing with the University. Examples of this offense include, but are not limited to:
- a. forging or altering any University document, record, or instrument of identification;
 - b. furnishing any person material information which is known to the student to be false and which relates to the student's academic record or otherwise concerns activities in the University.
8. Interference with property. Interference with property is defined as any taking or destroying of the property of the University or of its faculty, staff, or students. Such property includes, but is not limited to, materials in the Library of the School of Law. Examples of this offense include, but are not limited to:
- a. stealing, damaging, or destroying books, notes, computers, or other belongings of students or faculty;
 - b. stealing, hiding, or vandalizing library materials;
 - c. stealing, damaging, destroying, or other abuse of University information technology resources including the University's hardware, systems, network and services;
 - 1. unauthorized entry into a file, to use, read or change the contents, or for any other purpose;
 - 2. unauthorized transfer of a file;
 - 3. unauthorized use of another individual's identification and password;
 - 4. use of computing facilities to interfere with the work of another student, faculty member or other member of the University community;
 - 5. use of computing facilities to send obscene or abusive messages;
 - 6. use of computing facilities to interfere with normal operation of the University computing system;
 - 7. unauthorized used of facsimile machines, media equipment, phone equipment (including voicemail);
 - d. stealing, damaging, destroying, or otherwise misusing other University property.

9. Aiding and abetting. Any intentional act to aid and/or abet a violation of these Regulations may be subject to disciplinary action.
10. Cheating. Cheating includes but is not limited to giving or receiving unauthorized assistance during an examination or other written assignment; obtaining unauthorized information about an examination before it is given; submitting another's work as one's own; using prohibited sources of information during an examination or other written assignment; fabricating or falsifying data in research; altering the record of any grade; altering answers after an examination has been submitted; falsifying any official University record; or misrepresenting of facts in order to obtain exemptions from course requirements.
11. Conduct in violation of UH rules, regulations and policies. Activity in violation of the University's policies including policies against discrimination, sexual harassment and inappropriate use of technology, may be subject to disciplinary action. For example, laws relating to child pornography, obscenity and defamation apply in electronic environments.

Article III. Unprofessional Conduct

- A. General rule. Any student who engages in unprofessional conduct with regard to any matter, whether or not related to the School of Law or to University of Hawai'i, may be subject to disciplinary action pursuant to these regulations. Unprofessional conduct is conduct:
 1. that is illegal conduct involving moral turpitude; or
 2. that involves dishonesty, fraud, or deceit; or
 3. that violates the standards of professional ethics established for lawyers or otherwise adversely reflects on the fitness of the student for admission to the bar. Such standards include the standards enacted by the Supreme Court of the State of Hawai'i to govern the conduct of lawyers.
- B. Specific examples. Subject to the standard defined in paragraph A, above, the following are examples of conduct that may be determined to be unprofessional conduct subject to disciplinary action pursuant to these regulations:
 1. Failure to comply with University rules relating to student conduct and discipline. Students are required to comply with the rules established by University of Hawai'i relating to student conduct and discipline. Willful or repeated failure to comply with such rules may be determined to be unprofessional conduct subject to disciplinary action pursuant to these regulations whether or not such conduct is also subject to disciplinary action pursuant to University rules.

2. Violations of public law. Conduct in violation of public law may be determined to be unprofessional conduct subject to disciplinary action pursuant to these regulations whether or not such conduct is also subject to criminal or other sanctions. In making such determinations, relevant opinions and decisions by the State of Hawai'i Office of Disciplinary Counsel and other analogous agencies in other states should be considered.
3. Other conduct. Conduct defined as unprofessional conduct under paragraph 1, above, may be subject to disciplinary action pursuant to these regulations whether or not such conduct is related to the academic process at University of Hawai'i, and whether or not such conduct is also subject to other sanctions.

Article IV. Investigation and Presentation of Charges

- A. Preservation of anonymity. Throughout all phases of investigation, presentation of charges and review of Disciplinary Committee decisions, and subject to the needs of a reasonable investigation, all parties will take reasonable steps to maintain the anonymity of the student(s) charged with misconduct under these regulations.
- B. Temporary suspension. In an emergency, the Dean may temporarily suspend a student prior to a hearing; provided that hearing pursuant to these rules is conducted within a reasonable time thereafter if the student requests a hearing. Examples of emergencies include situations where the student poses a danger of inflicting bodily harm upon himself/herself or others, of inflicting serious emotional distress on others, or creating a substantial disruption of law school activities including classroom instruction. If possible, a temporary suspension should be issued only after the Dean has met with the student and relevant others and discussed the situation and alternative solutions with them.
- C. Investigation of reported student misconduct. All reports of student misconduct must be in writing and shall be referred to the Office of the Dean, which shall promptly conduct an investigation of the matter. At the direction of the Dean, the Associate Dean or the Assistant Dean shall discuss the matter with the student at the earliest opportunity, informing the student of the right to counsel at his or her own expense and the right to remain silent, and warning that anything the student may say may be used against the student. At that time, the student shall be given a copy of these regulations.
- D. Informal disposition. If, in the judgment of the Dean, the report is unfounded or warrants no formal action, no action shall be taken and no record shall be made of the matter in the student's law school record or upon the student's University transcript. The student shall be informed promptly of the Dean's determination and the matter shall be considered closed.

If, in the judgment of the Dean, the report appears to warrant disciplinary action, the Dean, with the written agreement of the student, may impose any of the sanctions provided herein. Such agreement must be reached within seven calendar days of the receipt by the student of written notice of the Dean's recommended sanction.

- E. Presentation of charges. If, in the judgment of the Dean, the report appears to warrant disciplinary action and the student does not agree to the sanction recommended by the Dean, the Dean shall direct that charges against the student be drawn and that the entire matter be referred to the Law School Disciplinary Committee. The Associate Dean shall promptly draw up charges against the student and transmit such charges in writing both to the student and to the Disciplinary Committee convened to hear the charges pursuant to Article V, below. If, in the judgment of the Dean, the alleged violation does not involve unprofessional conduct as that term is defined in Article III above, the Dean may hand the matter over to the University's Dean of Students for further disposition rather than referring the matter to the Law School Disciplinary Committee.

Article V. The Disciplinary Committee

- A. Composition of the Disciplinary Committee. Except as provided in paragraph B, below, the Disciplinary Committee shall consist of one third-year law student and four members of the full-time Faculty of the School of Law. The Disciplinary Committee shall be constituted by the Dean each academic year at the same time and the same manner in which all other faculty committees are constituted, with the exception that the student member shall be selected by the Dean rather than by student election.
- B. Election of a Disciplinary Committee consisting solely of Faculty members. Any student against whom charges are brought pursuant to these regulations may elect to have the Disciplinary Committee convened to hear the student's case consist solely of three members of the full-time Faculty of the School of Law. Such election shall be made promptly upon receipt by the student of the charges. The Dean shall decide which one of the four original faculty members is to be removed from the Committee for the purpose of that hearing.
- C. Joint hearings. Where two or more students are charged with participating in the same act or transaction, or in the same series of acts or transactions, constituting a rule violation or unprofessional conduct under these Regulations, the charges shall be referred to a single Disciplinary Committee for a joint hearing. If, in the judgment of the Committee, a separate hearing should be held for any reason in the case of any such student, the Committee convened to hear the charges shall hold such separate hearings as are required. If one or more, but fewer than all, students charged in a joint hearing elect to have the Committee consist solely of Faculty members as provided in paragraph D, below, the Faculty members of the single Committee constituted pursuant to this paragraph shall constitute the Disciplinary Committee in the case of such student or students and shall hold a separate hearing or hearings as required.
- D. Resignation and replacement of Disciplinary Committee members. If any member of a Disciplinary Committee feels that the member's relationship with either the case or the individuals involved would affect the member's ability to render an impartial judgment, the member shall immediately resign from the Disciplinary Committee and a replacement shall be selected by the Dean.

Article VI. Disciplinary Committee Procedure and the Rights of the Student

- A. Hearing date. Upon presentation of charges against a student as provided in Article IV, above, the Disciplinary Committee convened to hear the charges shall promptly set the earliest possible date for a hearing by the Committee consistent with the preparation of the case by the Associate Dean and by the student. Provided, however, since the Committee only sits during Fall and Spring semesters, the hearing on charges brought late in one semester may be deferred until the following semester.
- B. Notice to the student. The Disciplinary Committee convened to hear charges against a student shall promptly inform the student of the hearing date in writing, and shall promptly transmit the following to the student:
1. a written copy of the charges made and referred to the Committee; and
 2. copies of all supporting documents submitted to the Committee.
- C. Presentation of the case. The Associate Dean shall prepare the case and present the facts in the proceedings before the Disciplinary Committee. The Associate Dean shall have the right to be assisted by counsel.
- D. Student's right to counsel. The student has the right to choose and to be represented by, or to be accompanied by, an advisor or counsel at all stages of the proceeding before the Disciplinary Committee. Such advisor or counsel may be any person of the student's choice, provided, however, that any cost incurred shall be borne by the student.
- E. Witnesses and evidence at the hearing. Both the student and the Associate Dean have the right to call witnesses and to introduce evidence at the hearing. Each party and the Committee members may cross-examine any witness.
- At least four days prior to the hearing the parties shall exchange copies of all documents to be submitted at the hearing and a list of all witnesses expected to be called, including a brief summary of each witness' testimony.
- F. The right to remain silent. The student has the right to remain silent at the hearing. No inferences shall be drawn from a decision by the student to remain silent at the hearing.
- G. Rules of evidence. The rules of evidence applicable to criminal and civil trials do not govern hearings before a Disciplinary Committee. Except as otherwise provided in this article, and subject to disapproval by vote of the Committee, the Chair of the Disciplinary Committee may make such rulings as to the admissibility of evidence as in the judgment of the Chair will expedite the hearing and ensure due process.
- H. Disciplinary Committee hearings. The place of the hearing before a Disciplinary Committee shall be determined by the Committee. Hearings are normally closed. However, the student may elect to have the hearing open to the public.

- I. Tape recordings. Disciplinary Committee hearings, except for the Committee's deliberations, shall be recorded in full on audio tape, which shall be held in the files of the School of Law and made available to the student, or the student's authorized representatives, for review. Such materials shall be kept for a period of time consistent with the University's normal record retention policies and/or practices.
- J. Rules of procedure. Except as otherwise provided in this article, the Disciplinary Committee may adopt such procedural rules as in the judgment of the Committee will expedite the hearing and ensure due process.
- K. Burden of proof. The Associate Dean bears the burden of proof to establish by clear and convincing evidence that the student violated these Regulations.

Article VII. Disciplinary Committee Decisions

- A. Disciplinary Committee deliberations private. After receiving all the evidence, statements, and arguments submitted at the hearing, the Disciplinary Committee shall deliberate in private.
- B. Majority vote required. The Disciplinary Committee's decisions shall be reached by majority vote.
- C. Acquittal. If a majority of the Disciplinary Committee does not decide that a rule violation or unprofessional conduct has been established by clear and convincing evidence, the student shall be acquitted. In such a case, the charges shall be dismissed and no record shall be made of the matter in the student's law school record or upon the student's University transcript. An acquittal is a final decision and may not be appealed to the Disciplinary Review Panel.
- D. Rule violation or unprofessional conduct established. If the Disciplinary Committee decides that a rule violation or unprofessional conduct has been established, the Committee shall determine the specific disciplinary action that in its judgment is warranted. The Committee shall promptly set forth its decision in a written confidential report to the Dean containing the Committee's findings of fact and conclusions based upon the evidence introduced at the hearing. The student shall promptly be given a copy of the Disciplinary Committee's report, and notified of the right to appeal pursuant to Article VIII, below. If the student fails to appeal, the Committee's decision is final immediately and the Dean shall direct the relevant person to implement the decision.
- E. Form of disciplinary action. The following are some of the forms of disciplinary action that may be taken pursuant to the decision of a Disciplinary Committee or the Dean. In its determination of an appropriate sanction, the Committee may take into consideration factors beyond those at issue at the hearing, e.g. the impact of a grade reduction on the student's G.P.A.:
 - 1. Reprimand. The student may receive a reprimand. The reprimand is part of the student's law school record, but is not recorded upon the student's University transcript.

2. Censure. The student may receive a censure. The censure is part of the student's law school record and is recorded upon the student's University transcript.
 3. Grade reduction/revocation of degree. The student's grade in the course in which an alleged violation occurred may be reduced by one or more grade levels or rescinded. Moreover, a previously awarded degree may be revoked.
 4. Suspension. The student may be suspended from the School of Law for a determinate period with permission to return at the end of that period. The suspension is part of the student's law school record and may be recorded upon the student's University transcript. A suspension may be stayed subject to the proviso that the stay shall terminate automatically if, during such stay, the student is found to have again violated these regulations.
 5. Expulsion. The student may be expelled. The expulsion terminates the student's status as a law student and permanently ends the student's studies at the School of Law. The expulsion is part of the student's permanent law school record and is recorded upon the student's University transcript.
 6. Notice to State Bar Examiners. Any finding of unprofessional conduct or rule violation shall be reported to the Bar Examiners of the Supreme Court of the State of Hawai'i or to any similar agency in another jurisdiction in which the student might seek to practice law.
- F. Effect of decisions of a Disciplinary Committee. In any case involving a finding of cheating on a final examination in a course or plagiarism on a paper in a course, seminar, or supervised writing project, the presumptive effect of such a finding shall be that the student receives a grade of "F" (or in the case of a CR/NC course, a grade of "No Credit"). The Committee may, if in its discretion the circumstances warrant, deviate from this presumptive rule.

Article VIII. Appeal of Disciplinary Committee Decisions

- A. Review by the Disciplinary Review Panel. All Disciplinary Committee decisions finding that a rule violation or unprofessional conduct has been established may be appealed by the student involved. The appeal shall be in writing and must be received by the Associate Dean within 14 calendar days of the student's receipt of the Committee's report. The student's appeal statement shall set forth grounds upon which the student desires relief from the Committee's decision. The Disciplinary Review Panel shall review such portions of the evidence and testimony as are necessary to full consideration of the student's appeal, but the Panel need not confine its review to issues raised before the Committee. No additional evidence shall be introduced for consideration in the review by the Panel.
- B. Composition of the Disciplinary Review Panel. The Disciplinary Review Panel shall consist of all voting members of the Faculty except that the faculty members who served on the Disciplinary Committee shall not be voting members of the Disciplinary Review Panel.

- C. Disqualification of Disciplinary Review Panel Members. If any member of a Disciplinary Review Panel feels that his or her relationship with either the case or the individuals involved would affect his/her ability to render an impartial judgment, the member shall disqualify him/herself.
- D. Panel procedure. The Disciplinary Review Panel shall deliberate in private. The Panel's decision shall be reached by majority vote of the Panel members present and voting.
- E. Hearing date. All appeals shall be heard within 35 calendar days of receipt of the appeal. Provided, however, since the Disciplinary Review Panel only sits during Fall and Spring semesters, the hearing on an appeal filed late in the semester may be deferred until the following semester.
- F. Action on review of Disciplinary Committee decisions. The Disciplinary Review Panel may take the following action on review of decisions by a Disciplinary Committee:
1. adopt the Committee's decision and the disciplinary action determined by the Committee; or
 2. adopt the Committee's decision as modified to impose a lesser disciplinary action than that determined by the Committee; or
 3. set aside the Committee's decision in whole or in part, and dismiss the charges or send the matter back to the Committee for rehearing as to all or part of the issues raised before the Committee.
- G. Disciplinary Review Panel's decision final. The action taken by the Disciplinary Review Panel on review of a decision by a Disciplinary Committee is final within the University.

Article IX. Rights of the Student Defendant

A. Rights of the student defendant.

1. A student defendant has the right to a clear, concise written statement of charges against the student.
2. A student defendant may enter a plea of guilty in writing to the alleged violation to the Dean at any time before the final verdict has been rendered by the Disciplinary Committee. If the Dean and the student are unable to agree upon an appropriate sanction, the matter shall be submitted to the Disciplinary Committee for determination. The student has the right to appeal such a determination to the Disciplinary Review Panel.
3. In the event of a hearing before the Disciplinary Committee, a student defendant has the right to:

- a. prompt completion of all the procedures provided herein, provided, however, that the student be given sufficient time to prepare any defense the student wishes to offer, and further provided, however, that the hearing and the appeal procedures can only take place in the Fall and Spring semesters;
- b. appear before the Disciplinary Committee;
- c. legal counsel or a representative of the student's choice, with any cost so incurred to be borne by the defendant;
- d. present oral, documentary, or physical evidence on the student's behalf;
- e. examine and cross-examine witnesses;
- f. require the Disciplinary Committee to request the presence of witnesses and the production of documents or physical evidence;
- g. remain silent without such silence being construed against the student;
- h. a presumption of the student's innocence until the Disciplinary Committee is convinced by clear and convincing evidence that the student engaged in the misconduct charged in violation of these Regulations;
- i. a copy of the Disciplinary Committee's decision in writing; and
- j. waive any right herein conferred by notice of such waiver in writing to the Disciplinary Committee, or by failure to appear after being duly served, or by failure to exercise any rights granted the defendant.

Article X. Severability

If any provision of this Disciplinary Regulations is held to be unconstitutional, the remaining provisions, wherever possible, shall be severable therefrom.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

OCTOBER, 2005 SURVEY INFORMATION

Entity: Hawai'i Supreme Court Board of Examiners (BOE)

Persons interviewed: Robert Chong (Chair, BOE)
Carole Richelieu (Chief Disciplinary Counsel, Office of
Disciplinary Counsel (ODC))

Information:

Our Hawai'i bar exam tests examinees on the subject of Legal Ethics. The format is either (1) a single essay question or (2) fifteen multiple-choice questions, at the election of Carole Richelieu, who drafts the Legal Ethics question(s). The question(s) specifically tests the examinee's knowledge of the Hawai'i Rules of Professional Conduct.

In addition to the above-described testing, bar applicants must separately pass the Multistate Professional Responsibility Examination (MPRE). The MPRE is owned and administered by the National Conference of Bar Examiners, and tests the examinee's knowledge of the American Bar Association (ABA) Model Rules of Professional Conduct, the ABA Model Code of Judicial Conduct, as well as controlling constitutional decisions and generally accepted principles established in leading cases (federal and state) and in procedural and evidentiary rules. The MPRE is administered nationally three times a year (March, August and November). An applicant to the Hawai'i bar must pass the MPRE with a scaled score of 85 or higher. The date of the MPRE test on which the applicant achieves a passing scaled score must not be dated more than two years prior to the Hawai'i bar exam successfully taken by the applicant.

HAWAII SUPREME COURT COMMISSION ON PROFESSIONALISM

OCTOBER, 2005 SURVEY INFORMATION

Entity: Hawaii Professionalism Course

Persons interviewed: Calvin Young (Chair, HSBA Professional Responsibility Committee)
Carole Richelieu (Chief Disciplinary Counsel, Office of Disciplinary Counsel (ODC))

Information:

Pursuant to Rule 1.14 of the Rules of the Supreme Court of Hawaii, each person licensed after July 1, 2001 to practice law in Hawaii must complete a Hawaii Professionalism Course no later than one year after admission to the bar. Failure to comply with this rule will result in an administrative suspension. The Hawaii Professionalism Course is administered by the Hawaii State Bar Association (HSBA) twice a year. There is no test on completion of this course.

The mandatory course had undergone changes in format and presentations over the years. The most recent format has received greatly improved evaluations by the attendees. The present format is entitled "Managing the Client Relationship," and was designed by the Attorneys Liability Protection Society (ALPS). The program is interactive. After viewing a series of video vignettes, the attendees discuss in small groups a series of questions that address the issues raised in each vignette. A large group discussion then follows in order to bring together the different ideas and responses that arise in the small groups. The goal of the Course is to increase awareness of ethical dilemmas, rather than "solve" the dilemma. The Course emphasizes that attorneys should take time to reflect upon ethical issues and

professionalism, and use such ethics and professionalism analyses in their individual practices. Examples of the vignettes are "How Did My Best Friend Become a 'Problem Client'?", "The Simple Contract," and "Going it Alone."

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

OCTOBER, 2005 SURVEY INFORMATION

Entity: Hawai'i State Bar Association (HSBA)

Persons interviewed: Lyn Flanigan (HSBA Executive Director)
Paulette Suwa (HSBA Continuing Legal Education (CLE)
and Program Manager)
Corianne Lau (Chair, HSBA CLE Committee)

Information:

The HSBA administers the Hawai'i Mandatory Professionalism Course. In addition, the HSBA offers a number of CLE seminars throughout the year. Appended for your information is a list of CLE seminars from 1999-2005. A review of the list shows that very few of the CLE seminars are offered on the subject of legal ethics and professionalism. The reason for this is two-fold: (1) seminars focused on legal ethics and/or professionalism have been poorly attended and are difficult to organize due to lack of interest (and are not usually profitable financially), and (2) most of the CLE seminars have been prompted by suggestions of the various HSBA sections, *i.e.*, Bankruptcy Law, Real Property and Financial Services, Business Law, etc.

It should be noted that the scheduled day-long December 12, 2005 CLE seminar entitled "Solo & Small Firm Practitioner Conference" will address legal ethics and conflict issues, which may provide an opportunity for our Commission to "go public" and participate in some manner.

Regarding Lawyer Regulation, the HSBA has expressed an interest in developing "preventative," "diversionary" and "mentoring" programs in conjunction with the Office of Disciplinary Counsel (ODC).

2005 CLE Seminars

Date	Programs	# of Attendees
January 28	It's the Law: What Nonprofits Need to Know Manual (4 th Edition) Seminar	57
February 9	Legal Series: Alternative Dispute Resolution	4
February 16	Legal Series: Federal Practice & Procedures	15
February 23	Legal Series: Basic Real Estate	21
February 24	Arbitration Law for Transactional	19
March 3	An Overview of the Scope of the Attorney General's REAL PROPERTY-RELATED PRACTICE	23
March 9	Legal Series: Summary Possession	20
March 15	Arbitration Law for Litigation	48
March 16	Legal Series: Estate Planning	26
March 30	Legal Series: Civil Litigation	40
April 6	Legal Series: Family Law	31
April 13	Legal Series: Bankruptcy	38
April 20	Legal Series: Choice of Business Entity – From a Tax Attorney's Perspective	38
April 27	Legal Series: Collection Law	49
May 4	Legal Series: Probate	45
May 11	Legal Series: Labor and Employment Law	46
May 21	Hawaii Professionalism Course for New Admittees	83
May 27	Fourth Friday Lecture: Extreme Torts: Are Punitive Damages in Hawaii Out of Control?	27
June 9	May it Please the \$&*@*@!(! &! Court: The New Guidelines for Professional Civility and Courtesy	41
June 23	Basic PowerPoint for Litigators	9
June 24	Advanced PowerPoint for Litigators	5
June 27	Federal Practice and Procedures (Kauai)	
July 15	Medical School for Lawyers	89
August 2	Business and Real Property Legislative Update	86

September 2	Civil Litigation (Kauai)	
September 16 & 17	Hawaii Trial Academy	38
September 21	Advanced LLC Issues in Hawaii	49
September 30	Bankruptcy Reform	208
October 20- 21	Bar Convention Hawaii Professionalism Course Hot Topics in Litigation Hawaii Conservatorship and Guardianship Forms Manual Trends and Recent Developments in Intellectual Property Law Regulation of Agricultural Lands Navigating the Pitfalls of Doing Business in the U.S. Winning Strategies and Trial Techniques Annual Divorce Law Update Comparative Taking and Regulation of Land International Deal Creation and Repair	
November 9	Judges Settlement Conference Practice Tips	
December 12	Solo & Small Firm Practitioner Conference	

2005. continued

2004
YEAR-END COUNTS

Date	Program	# of Attendees
January 30	FREE CLE: Current Case Law - Kona	12
February 12	Court ADR: Program and Practice Issues and Tips for Courts, Mediators and Attorneys	18
March 5	Protecting Your Assets While Restoring Community to Community Associations	62
March 31	FREE CLE: Circuit Court Motions Practice	44
April 6	Bringing Peace into the Room: How the Personal Qualities of the Mediator/Settlement Judge Impact the Mediation/Settlement Conference Process	41
May 5	FREE CLE: Finding and Working With the Right Expert	35
May 19	Brown vs. Board of Education at 50: Still Mightily Discouraged?	35
May 22	Mandatory Professionalism Course for New Admittees	59
July 14	HIPAA Program	91 4 web
July 28	Real Property & Business Law Legislative Update 2004	91
July 28	Federal District Court Practice & Procedure	60
Sept 9	Basic PowerPoint for Litigators	15
Sept 10	Advanced PowerPoint for Litigators	11
Sept 18	Trial Academy (2-day Program)	52
Sept 29	Free CLE: Legislative Update 2004	14
Oct 2	Trial Academy (continued)	52
Oct 29-30	Bar Convention Mandatory Professionalism Course for New Admittees Planning to Win Guardianship & Capacity Emerging Environmental & Land Use Hot Topics in Litigation Real Property Program Annual Divorce Law Update Impact of HIPAA on Your Practice	700
November 5	Revised Hawaii Rules of Civil Procedure Regarding Discovery (Effective July 1, 2004)	62
Dec 9	FREE CLE: Malpractice Prevention Seminar	36

2003 CLE Seminars

Date	Programs	# of Attendees
January 10, 2003	Amendments to Local Rules of Practice for the United States District Court for the District of Hawaii	253
May 2, 2003	FREE CLE Malpractice Prevention Seminar: Acceptable Lies? The Ethics of Negotiation and Legal Duties of Disclosure	72
July 22, 2003	Real Property and Business Law Legislative Update 2003	140
September 25, 2003	PowerPoint	15
October 29-30, 2003	Bar Convention Hot Topics in Litigation Limited Liability Company Manual Professionalism Course for New Admittees Current Developments in Intellectual Property Casualty & Property Insurance Hot Topics & Updates to Hawaii Real Estate Law Manual Probate Forms Manual, 2 nd Edition 2003 Divorce Law Update Hot Topics in Dispute Resolution & Settlement Conferences Sarbanes-Oxley Act of 2002	

*Database crashed

2002 CLE Seminars

Date	Program	# of Attendees
January 31	PowerPoint	10
March 8	Malpractice	115
May 10	Collection Law	90
May 15	PowerPoint for Litigators	12
May 16	PowerPoint for Litigators	3
	PowerPoint Package	10
July 8	Business Legislative Update	86
July 18	Real Property Legislative Update	150
May 25	Professionalism Course	66
November 16	Professionalism Course	138
October 17-19	Bar Convention <ul style="list-style-type: none"> • Hot Topics in Litigation • Corporations • Elder Law/Medicaid • Natural Law • Employment & Labor Law (2-1/2 days) • Commercial • Uniform Arbitration Act • Divorce 	400

2001 CLE Seminars

Date	Programs	# of Attendees
June 14, 2001	What a "Dirt Lawyer" Needs to Know About the New UCC Article 9	151
July 19, 2001	Real Property Legislative Update	151
July 24, 2001	Landlord-Tenant Law Seminar	87
November 20, 2001	Annual Real Property Litigation Update	111
September 27 & 28	Bar Convention Hot Topics In Litigation Annual Divorce Law Manual Update Adoption Manual Update Environmental ADR: Promise or Peril? The International Commercial Arbitration Process Nonprofit Manual Update Conveyance Manual Conflict Assessment in Environmental Conflicts Elder Law and Medicaid Planning Update	

2000 CLE Seminars

Date	Programs	# of Attendees
January 11, 2000	Hawaii Rules of Civil Procedure and Hawaii Appellate Rule Changes Seminar	236
March 24, 2000	Restatement of the Law of Property, Third, Servitudes	178
April 19, 2000	Bankruptcy Law Update for Non-Bankruptcy Practitioners	85
July 13, 2000	2000 Legislative Updates – Real Property Legislative Update	134
July 20, 2000	2000 Legislative Updates – Business Law Legislative Update	100
September 19, 2000	Annual Estate Planning Seminar	109
September 27, 2000	Conveyance Manual Seminar	102
November 1, 2000	Annual Real Property Litigation Update	101
November 2, 2000	Major Amendments to Federal Rules of Civil Procedure and Evidence	219
November 30 & December 1, 2000	Bar Convention The New UCC Article 9 Motion Practice in State and Federal Court Employment Law Annual Divorce Law Update Qui Tam Hot Topics in Environmental Law Annual Divorce Law Update Unbundling and Other Cutting-Edge Mediation	

1999 CLE Seminars

Date	Programs	# of Attendees
April 29, 1999	Bankruptcy Law for Non-Bankruptcy Attorneys	136
July 15, 1999	Real Property Legislative Update	144
July 22, 1999	Business Law Legislative Update	110
September 21, 1999	Estate Planning Seminar	107
October 13, 1999	The Hawaii Motor Vehicle Collision Manual & American Bar Association Tips Seminar	83
October 21, 1999	Annual Real Property Litigation Update	113
November 9, 1999	New Family Court Rules & 1999 Divorce Manual	160

HAWAII SUPREME COURT COMMISSION ON PROFESSIONALISM

OCTOBER, 2005 SURVEY INFORMATION

Entity: Office of Disciplinary Counsel (ODC)

Person interviewed: Carole Richelieu (Chief Disciplinary Counsel, ODC)

Information:

Appended is a self-explanatory letter dated October 12, 2005 from Carole Richelieu to Justice Duffy.

Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawai'i 96813
Telephone (808) 521-4591

Chief Disciplinary Counsel
Carole R. Richelieu
Assistant Disciplinary Counsel
Charles H. Hite
Michael T. Lee
Geoffrey M. Kam
Of Counsel
Alvin T. Ito
Magali V. Sunderland*
*A Law Corporation
Investigator
Fred Oishi
Research Paralegals
Darryn J. Manuel
Lisa Lemon-Monville



Disciplinary Board

Chairperson
Charles T. Kleintop
Vice Chairperson
Diane D. Hastert
Secretary
Lynn H. Higashi
Treasurer
Richard A. Coons, CPA

Rustam A. Barbee
Richard A. Chamberlin, Ph.D.
Corlis J. Chang
Chief Lee D. Donohue (Ret.)
Gary M. Farkas, Ph.D., MBA
Hon. Leslie A. Hayashi
Joyce Ingram-Chinn, Ph.D.
Hon. Evelyn B. Lance (Ret.)
Hon. Clifford L. Nakea (Ret.)
Dean E. Ochiai
Blake T. Okimoto
Jean E. Rolles, CPM
Carroll S. Taylor
Thomas D. Welch, Jr.

October 12, 2005

The Honorable James E. Duffy, Jr.
Associate Justice
Supreme Court of Hawai'i
417 S. King Street
Honolulu, Hawai'i 96813

Re: Commission on Professionalism

Dear Justice Duffy:

In follow up to our telephone conversation of October 7, 2005, we are pleased to provide you with the following material.

Information on ethical and professionalism issues is available to the legal community via the Formal Opinions of the Disciplinary Board. There are currently 20 Formal Opinions.

Such information is also available through the Office of Disciplinary Counsel via informal telephone opinions and written opinions, as well as monthly Hawai'i Bar Journal articles, presentations and seminars, written resource materials, and responses to requests for information. In 2004, this office provided 1,048 telephone opinions, 40 written opinions, and 95 responses to requests for information. Thus far in 2005, this office has provided 747 telephone opinions, 28 written opinions, and 64 responses to requests for information. In 2004, this office participated in 10 presentations and seminars. Thus far in 2005, this office has participated in 11 presentations and seminars.

Presentations are also made to law students via the law school and Inns of Court.

The Honorable James E. Duffy, Jr.
October 11, 2005
Page 2

Information and assistance are additionally available to the public through telephone and in-person contacts, as well as presentations. In 2004, this office had 1,229 contacts with the public. Thus far in 2005, this office has had 793 contacts.

Please feel free to contact me at 521-4591, extension 232, should you need any further information.

Very truly yours,

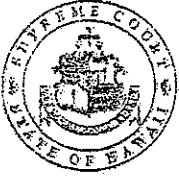


CAROLE R. RICHELIEU
CHIEF DISCIPLINARY COUNSEL

CRR:fh

Appendix

“F”



Supreme Court — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • ALI'ĪOLANI HALE • HONOLULU, HAWAII 96813-2912 • TELEPHONE (808) 539-4715 • FAX 539-4703

James E. Duffy, Jr.
ASSOCIATE JUSTICE

August 4, 2005

The Honorable Joseph Cardoza
Second Judicial Circuit
2145 Main Street
Wailuku, HI 96793

Steven Dixon, Esq.
Attorneys & Judges Assistance Program
801 Alakea Street, Suite 209
Honolulu, HI 96813

Carol Muranaka, Esq.
Office of Chief Counsel
Internal Revenue Service
300 Ala Moana Boulevard, Room 7-121
Honolulu, HI 96850

Terence O'Toole, Esq.
Starn O'Toole Marcus & Fisher
737 Bishop Street, Suite 1740
Honolulu, HI 96813

Mr. Wesley Park
Maunawili Consulting, LLC
1133 Waimanu Street, Suite 2800
Honolulu, HI 96814

The Honorable Karen Radius
First Judicial Circuit
777 Punchbowl Street
Honolulu, HI 96813

The Honorable Trudy Senda
Fifth Judicial Circuit
3059 Umi Street
Lihue, HI 96766

The Honorable Steven Levinson
Supreme Court of Hawaii
417 S. King Street
Honolulu, HI 96813

Carole Richelieu, Esq.
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, HI 96813

Ms. Petra Bray
1 Keahole Place, #2504
Honolulu, HI 96825

The Honorable Susan Oki Mollway
United States District Court
for the District of Hawaii
PJJK Federal Building
300 Ala Moana Boulevard
Honolulu, HI 96850

Mr. Nathan Nikaido
The Mediation Center of the Pacific
The Dole Office Building
680 Iwilei Road, Suite 530
Honolulu, HI 96817

Kevin Takata, Esq.
Dept. of the Prosecuting Attorney
1060 Richards Street
Honolulu, HI 96813

Re: Commission on Professionalism

Dear Member of the Joint Committee on Lawyer Regulation and Remedial Programs of the Commission on Professionalism:

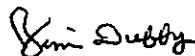
Thank you to all of the members who were able to attend our meeting on August 1, 2005. It was a great meeting! A special thank you to Carole Richelieu and Justice Levinson for giving us an overview of our lawyer disciplinary system, what problems they see in the present functioning of the system, and how the system could be improved with a viable program for diversion of minor misconduct complaints to non-disciplinary proceedings pursuant to Rule 2.7(b) of the Hawai'i Supreme Court Rules. A special thanks also to Wesley Park for encouraging us to think "out of the box" and take a fresh look at what can be done at each level of legal education and regulation (like a "systems audit") from law school on to help lawyers avoid the problems which lead to disciplinary complaints. Also, thanks to Lyn Flanigan of the Hawai'i State Bar Association (HSBA) for the written information provided regarding the programs and services provided by the HSBA.

Following up on these thoughts, I have prepared rough drafts of two survey documents seeking to inventory what programs we (collectively, the law school, the HSBA, and the Hawai'i State Judiciary) presently have in place concerning (1) professionalism and ethics and (2) remedial programs to which recipients of minor misconduct complaints could be referred to in lieu of commencing formal Office of Disciplinary Counsel (ODC) disciplinary proceedings. Copies of the surveys are enclosed. This information would appear to be a necessary first step before considering what additional programs may be needed to fill any gaps in our present system.

I have attempted to identify the entities and source people for each of the programs I can presently think of and intend to contact them and obtain information about their programs and any thoughts they may have as to how to improve our present system. If you know of other entities/source persons and/or would like to be involved in the gathering of this information, please let me know. It is my hope to have this inventory completed by the time of the next meeting of our entire Commission on October 28.

Thank you for your interest.

Very truly yours,



JAMES E. DUFFY, JR.

JED:jtm
Enclosures
cc: Lyn Flanigan, Esq. (w/encls.)

SURVEY

Area: Professional and Ethics Programs/Course

<u>Entities</u>	<u>Contact Person(s)</u>
William S. Richardson School of Law	Carol Mon Lee
Hawai'i Supreme Court Board of Bar Examiners	Robert Chong
Hawai'i Supreme Court Mandatory Professionalism Course	Calvin Young
Mentoring Program	Carol Mon Lee/ Lyn Flanigan
HSBA Continuing Legal Education	Cori Lau
ODC Advisory Opinions	Carole Richelieu

SURVEY

Area: Non-disciplinary Proceedings Authorized by the Hawai'i Supreme Court per Rule 2.7(b) for Minor Misconduct

<u>Entities</u>	<u>Contact Person(s)</u>
HSBA Referral Program for Problem Lawyers	Lyn Flanigan
HSBA Young Lawyers Division Lawyer Kokua/ Mentor Program	Lyn Flanigan
Attorneys and Judges Assistance Program	Steve Dixon
Alcoholics Anonymous	
Any licensed treatment center for alcohol and/or substance abuse	
Hawai'i licensed psychiatrists and/or psychologists	
William S. Richardson School of Law or any other law school accredited by the American Bar Association	Carol Mon Lee
Continuing legal education courses sponsored or administered by the HSBA, the Hawai'i Institute for Continuing Legal Education, the Pacific Law Institute, the American Bar Association, or approved for continuing legal education credit by a state supreme court	Cori Lau Robert Toyofuku
Center for Alternative Dispute Resolution	Elizabeth Kent
American Arbitration Association	
Neighborhood Justice Center	Tracey Wiltgen

Note: While the entities listed above are apparently the only ones presently authorized by the Supreme Court to conduct non-disciplinary proceedings under Rule 2.7(b), this rule defines the scope of non-disciplinary proceedings to include the following:

- free arbitration
- arbitration
- mediation
- lawyer practice assistance
- substance abuse recovery programs
- psychological counseling
- any other non-disciplinary proceeding authorized by the supreme court

It would appear that the list of authorized providers may need to be expanded to include coverage for each of the areas listed as being within the scope of non-disciplinary proceedings.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Approval)
of Agencies to Which Referrals)
May be Made Pursuant to Rule)
2.7(b)(3) of the Rules of the)
Supreme Court of the State of)
Hawai'i)

JUSTICE L. SABADO
GLENN S. SUPREME COURT

JAN 23 10 56 AM '96

FILED

ORDER APPROVING REFERRAL AGENCIES

Upon consideration of Disciplinary Counsel's request for approval of agencies to which referrals may be made pursuant to Rule 2.7(b)(3) of the Rules of the Supreme Court of the State of Hawai'i,

IT IS HEREBY ORDERED that the following agencies or types of agencies are approved for referrals pursuant to Rule 2.7(b)(3):

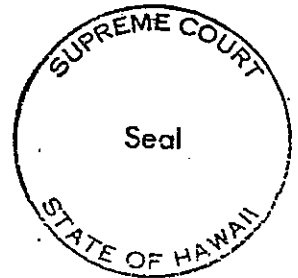
1. Hawai'i State Bar Association (HSBA) Referral Program for Problem Lawyers;
2. Young Lawyers Division Lawyer Kokua/Mentor Program;
3. Attorneys and Judges Assistance Program;
4. Alcoholics Anonymous;
5. Any licensed treatment center for alcohol and/or substance abuse;
6. Hawai'i licensed psychiatrists and/or psychologists;
7. William S. Richardson School of Law, University of Hawai'i or any other law school accredited by the American Bar Association;

8. Continuing legal education courses sponsored or administered by the HSBA, the Hawai'i Institute for Continuing Legal Education, the Pacific Law Institute, the American Bar Association, or approved for continuing legal education credit by a state supreme court;
9. Center for Alternative Dispute Resolution;
10. American Arbitration Association; and
11. Neighborhood Justice Center.

DATED: Honolulu, Hawai'i, January 23, 1996.

FOR THE COURT:


Chief Justice



NO. 24196

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

FILED
CLERK APPELLATE
STATE OF HAWAII

2001 APR 19 P 2:38

FILED

IN THE MATTER OF THE APPROVAL OF AGENCIES TO WHICH
REFERRALS MAY BE MADE PURSUANT TO RULE 2.7(b)(3) OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

PETITION FOR CLARIFICATION

ORDER

(By: Moon, C.J., for the court¹)

Upon consideration of the "Petition for Clarification of [the] Order Approving Referral Agencies Filed January 23, 1996," the affidavit of Assistant Disciplinary Counsel Geoffrey M. Kam, and the exhibits appended thereto, it appears that the Office of Disciplinary Counsel seeks clarification concerning whether The Risk Management Group is included among the "agencies or types of agencies . . . approved for referrals" pursuant to RSCH 2.7(b)(3). It further appears there is no evidence The Risk Management Group is (1) a Hawai'i Bar Association (HSBA) Referral Program for Problem Lawyers; (2) a Young Lawyers Division Lawyer Kokua/Mentor Program; (3) the Attorneys and Judges Assistance Program; (4) Alcoholics Anonymous; (5) a licensed treatment center for alcohol and/or substance abuse; (6) composed of Hawai'i licensed psychiatrists and/or psychologists; (7) the William S. Richardson School of Law, University of Hawai'i or any other law school accredited by the American Bar Association; (8) a Continuing legal education course sponsored or administered by the HSBA, the Hawai'i Institute for Continuing Legal Education,

¹ Considered by: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.

the Pacific Law Institute, the American Bar Association, or approved for continuing legal education by a state supreme court; (10) the American Arbitration Association; or (11) the Neighborhood Justice Center. Therefore,

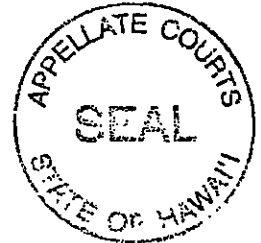
IT IS HEREBY ORDERED the petition is granted and the January 23, 1996, "Order Approving Referral Agencies" is clarified as not including The Risk Management Group among the agencies to which referral may be made under RSCH 2.7(b)(3). This order is without prejudice to the Office of Disciplinary Counsel seeking approval of any organization, provided the Office of Disciplinary verifies and submits proof of verification of the organization's licensing, certification, or approval in accordance with item 8 of the January 23, 1996, order or independent verification of the *bona fide* nature of the organization and the qualifications of its staff.

DATED: Honolulu, Hawai'i, April 19, 2001.

FOR THE COURT:

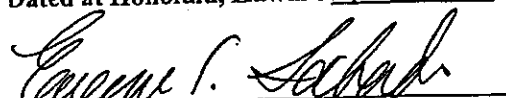


RONALD T. Y. MOON
Chief Justice



I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the Office of the Clerk of the Supreme court of the State of Hawai'i.

Dated at Honolulu, Hawai'i April 20, 2001



Eugene I. Sehad
Clerk, Appellate Courts, State of Hawai'i

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Joint Committee on Lawyer Regulation and Remedial Programs
Meeting of January 11, 2006
2:30 P.M. - 4:30 P.M.
Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Judge Joseph Cardoza, Steven Dixon, Lyn Flanigan,
Associate Justice Steven Levinson, Carol Muranaka, Nathan Nikaido,
Judge Karen Radius, Terence O'Toole, Wesley Park, Carole
Richelieu, Judge Trudy Senda, and Kevin Takata

HANDOUTS: (1) Petra Bray's letter of resignation dated December 9, 2005
(2) Hawai'i Supreme Court Order dated January 23, 1996
Approving Referral Agencies under RSCH 2.7(b)(3)
(3) RSCH 2.7(b)(3)
(4) Draft of proposed new RSCH 2.24A entitled Mandatory Audit of
Trust Accounts

I. WELCOME

Justice Duffy welcomed the members and thanked Petra Bray for her enthusiastic commitment to the Commission. Petra and her husband have left Hawai'i to be closer to their children on the mainland. Petra was one of the public, non-lawyer members of the Commission who was recommended by the League of Women Voters, and the League has been asked to recommend Petra's replacement.

II. PURPOSE OF MEETING

Justice Duffy related that at the October 28, 2005 meeting of the Commission, he asked the Mandatory CLE Committee and this Joint Committee to continue to meet, and come up with proposed recommendations to the Supreme Court in our February 17, 2006 meeting of the Commission. Our goal today is to reach a consensus on proposed recommendations to be discussed in the February 17 Commission meeting.

III. PROPOSED RECOMMENDATIONS

Justice Duffy suggested two proposed recommendations for discussion to get the ball rolling, and invited other suggestions.

Recommendation #1: that the Supreme Court Order dated January 23, 1996 Approving Referral Agencies be revised, updated, and expanded with the intention of encouraging the Office of Disciplinary Counsel to refer minor misconduct matters to non-disciplinary proceedings, as provided for in RSCH 2.7(b)(3).

Recommendation #2: that the Supreme Court adopt a new RSCH providing for a mandatory audit of an attorney's trust account, at the attorney's expense, whenever the attorney's trust account check is dishonored or the account's balance is below zero.

IV. DISCUSSION OF PROPOSED RECOMMENDATION #1

The committee reviewed the list of 11 agencies which are currently approved for minor misconduct referrals per the Supreme Court's January 23, 1996 Order. Discussion of the currently approved agencies was interesting, as it revealed, among other things, that:

- (1) the HSBA had in its files an undated written procedure for handling minor misconduct referrals from the ODC pursuant to an HSBA "Referral Program for Problem Lawyers";
- (2) some of the agencies listed either do not presently exist or have a different name;
- (3) some of the agencies listed can be "generically bundled" so as to be more inclusive, and not intended to endorse a specific competitive agency;
- (4) Hawai'i licensed physicians should be included, in addition to psychiatrists and psychologists currently listed;
- (5) the Hawai'i Attorneys and Judges Assistance Program is willing to assume responsibility for assisting, at the request of the ODC, Hawai'i licensed attorneys who presently reside on the mainland;
- (6) the PALMS and ALPS Risk Management Programs should be added;

- (7) accountants should be added; and
- (8) a "catch-all" description should be added at the end of the list to take care of the situation where an agency (or program) is not listed, but the Office of Disciplinary Counsel and the Respondent Attorney agree that referral to that otherwise unlisted agency (or program) would be appropriate under the circumstances.

TO DO: A consensus was reached that the list of agencies (and programs) approved for referral of minor misconduct matters to non-disciplinary proceedings contained in the January 23, 1996 Supreme Court Order Approving Referral Agencies needs to be revised. Justice Levinson volunteered to prepare a draft revision.

V. DISCUSSION OF PROPOSED RECOMMENDATION #2

The committee reviewed the draft of proposed new RSCH 2.24A entitled Mandatory Audit of Trust Accounts prepared by Carole Richelieu. Ms. Richelieu related the following bases, among others, for the proposed new RSCH:

- (1) while a client trust account check should theoretically never bounce, in fact, it is becoming a rampant problem, and is consuming an inordinate amount of time and resources of the ODC;
- (2) in response to receiving information from a financial institution (or other source) that a client trust account check has bounced or the account is below zero, the ODC audits the trust account (and frequently the other accounts of the lawyer, as there frequently is co-mingling of funds or other improprieties) with the client trust account problem being the "tip of the iceberg");
- (3) the audits take an average of 40-80 hours to complete; and
- (4) shifting the cost of the audit to the attorney being audited is more fair than having the bar members pay for it thru their ODC assessment, as is the case presently.

Justice Duffy asked Lyn Flanigan to state what the HSBA's anticipated response to such a proposal may be, and she related, among other things, that (1) ordering of an audit should remain discretionary, as the present RSCH 2.24 provides; and (2) the "strict liability" responsibility for the audit expense would appear to be unfair, as there conceivably could be a satisfactory explanation, such as a bank error. The ensuing discussion revealed that, while the committee

expressed no substantial opposition to the idea of a mandatory audit, it was uncomfortable with imposing "strict liability" for the audit expense.

TO DO: Carole Richelieu volunteered to prepare a revised draft of proposed new RSCH 2.24A for further consideration. Carole will also review whether the present RSCH 2.24 would need to be revised if a new RSCH 2.24A is recommended by the Commission, and if so, she will draft the proposed revisions.

VI. THANK YOU

This was a great meeting! Thank you for coming, and for all your help.

VII. NEXT MEETING

The Commission will be meeting on Friday, February 17 at 2:30 p.m. to discuss our committee's recommendations and the recommendations of the Mandatory CLE Committee. Please come!

Appendix

“G”

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of April 29, 2005

2:30 P.M. - 3:30 P.M.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Steven Dixon, Associate Judge Daniel Foley, Grace Nihei Kido, Carol Mon Lee, Carol Muranaka, Michael Nauyokas, Nathan Nikaido, Wesley Park, Carole Richelieu, Judge Trudy Senda, and Judge Terence Yoshioka

HANDOUTS: (1) Report of the Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism (complete copy with appendices)
(2) Biographical Information of Members of the Commission on Professionalism
(3) Article in the Pacific Business News entitled, "State moving fast on lawyer discipline," dated April 22, 2005

I. WELCOME

Associate Justice James E. Duffy, Jr., Chair, welcomed the members to the first meeting of the Hawai'i Supreme Court Commission on Professionalism and thanked the members for agreeing to serve as founding members.

II. INTRODUCTIONS

- A. Members introduced themselves and related something about themselves that was not in his/her printed biography
- B. Justice Duffy related that a representative of the City and County of Honolulu's Prosecutor's Office will be added as a member of the Commission.

III. HISTORICAL CONTEXT OF THE COMMISSION ON PROFESSIONALISM

Justice Duffy gave a brief historical over-view of the events which led to the establishment of this Commission

1996: Conference of Chief Justices nation-wide noted a significant decline in professionalism in the bar, and a consequent drop in the public's confidence in the legal profession and the Justice system generally. The conference recommended that State Supreme Courts nation-wide make a coordinated effort to improve professionalism in their state.

- 1999: Conference of Chief Justices came out with a National Action Plan on Lawyer Conduct and Professionalism. This Report called upon the state supreme courts to take a leadership role in improving professionalism and set forth black letter recommendations for how to so improve.
- 2001: Chief Justice Moon appointed a committee of Hawai'i attorneys, members of the public, and judges to review the National Plan and make recommendations to the Hawai'i Supreme Court as to what should be done in Hawai'i to improve professionalism.
- 2004: The Hawai'i Committee Report was finished, and recommendations were prioritized for consideration by the Supreme Court. Note: Hawai'i was the very first state to complete its Report and make recommendations to the Supreme Court!

The Report's very first recommendation was that the Court establish a Standing Commission on Professionalism to examine ways to improve Lawyer Competence and Effective Lawyer Regulation. Regarding Lawyer Competence, it was suggested that the Commission consider requiring some type of Mandatory Continuing Legal Education, and improve the existing Remedial Programs for Lawyers in trouble, or about to be in trouble (as noted by themselves or by others observing them).

- 2005: Hawai'i Supreme Court Commission on Professionalism was appointed.

IV. COMMITTEES

- A. To improve Lawyer Competence and Lawyer Regulation, Justice Duffy set up the following three Committees and appointed the following Chairpersons:
 1. The Mandatory Continuing Legal Education Committee
Chairs: Associate Judge Daniel Foley and Calvin Young, Esq.
 2. The Remedial Programs Committee
Chairs: Associate Justice Duffy and Mr. Wesley Park
 3. The Lawyer Regulation Committee
Chairs: Associate Justice Levinson and Carole Richelieu, Esq.
- B. Each committee will set up their own meetings and schedules, and periodically report back to the Commission as a whole.
- C. Members were asked to serve on one or more of the three committees. There are 21 members and each committee should have at least 5 members.
- D. Chairs of each committee were asked to say something about their committees.

1. Associate Judge Dan Foley and Calvin Young, Esq.
(Mandatory CLE)

Judge Foley indicated that the first thing the committee will need to do is to determine what CLE programs are offered now and the problem areas. Also need to determine where CLE is going before mandatory CLE is instituted. CLE may be able to coordinate some programs with the semi-annual judicial education conference outside speakers.

2. Carole Richelieu, Esq. (Lawyer Regulation)

One of the recommendations of the original committee was to improve effective lawyer regulation. Anticipated areas of improvement will be in the implementation of existing rules and improving communication, not necessarily discipline. Goal is to increase integrity in our system and protect the public.

3. Associate Justice Duffy and Mr. Wesley Park
(Remedial Programs Committee)

The Office of Disciplinary Counsel and the State Bar Association presently have programs to assist lawyers to avoid problems and to help them should they need it. These programs include how to properly set up or operate client trust accounts and business accounts, accounting responsibilities, law office management training, a mentoring program, a minor misconduct program and an attorney-client fee dispute arbitration program. The problem is that these programs are significantly under-utilized at present and the attorneys who need the help aren't asking for it until it is too late. We need to identify critical needs and how to meet them.

Justice Duffy envisions that the committee will be working closely with the ODC, the Bar, and Steve Dixon of the Attorneys and Judges Assistance Program.

E. Attorneys and Judges Assistance Program

At the invitation of Justice Duffy, Steve Dixon gave a brief overview of the Attorneys and Judges Assistance Program. The program follows Rule 16 of the Hawai'i Supreme Court. All 50 states have a lawyers' assistance program to render assistance to lawyers. Everything is confidential. Five support groups a week; one-on-one counseling; and support groups for spouses.

V. SIGN-UP SHEETS

- A. Sign-up sheets for the committees were distributed
- B. The members present volunteered as follows:

1. The Mandatory Continuing Legal Education Committee
Chairs: Associate Judge Daniel Foley and Calvin Young

Judge Terence Yoshioka
Mike Nauyokas
Carol Mon Lee
Carol Muranaka
Grace Kido

2. The Remedial Programs Committee
Chairs: Associate Justice Duffy and Wesley Park

Judge Trudy Senda
Carol Muranaka
Steven Dixon

3. The Lawyer Regulation Committee
Chairs: Associate Justice Levinson and Carole Richelieu

Nathan Nikaido
Carol Muranaka

- C. The members unable to attend this first meeting will be asked to sign up for a committee.

VI. COMMENTS

Justice Duffy asked the members if they wished to say anything. Among the comments:

- Lawyers are so busy doing cases that they frequently don't pay close enough attention to their ethical responsibilities, particularly in handling money. They are not dishonest, just don't know what is expected of them or too busy to pay attention.
- There seems to be a problem with lawyers handling money. Suggestions were made to have seminars on law office management and to coordinate with CPA groups to help and look out for these problems. At present, those who need the help don't seek it until it is too late. Need to educate attorneys and protect the public.

- Some mainland jurisdictions and Canada have random audits to go in and check whether attorneys' books are okay. The threat of random audits has apparently been a deterrent to improper handling of money. One possibility is to have an amnesty period where firms could call for help in organizing their books. Perhaps the local C.P.A. organization may be willing to volunteer to assist.
- Discipline cases involving mishandling of funds can go on for years as it is a nightmare to sort out.
- Lawyer misconduct cases sometimes/frequently arise out of the personal, medical and financial problems of the lawyer.
- Asked if there was staff support for the Commission? After Justice Duffy related none at present, Mike Nauyokas offered support staff and help with photocopying. Carol Mon Lee also offered support from the law school. Grace Kido offered her office for a downtown meeting place.
- Perspective of public citizens will be invaluable to the Commission.
- The Commission is not restricted to these three committee areas. These areas of concentration was selected by Justice Duffy to jump-start the Commission and get it up and running.
- Historical data (past statistics) of the ODC and the Bar in these committee areas would be useful if it could be obtained without violating any confidences. Can get list of publications of ODC and the Bar. Andy Winer was involved with issue of mandatory continuing legal education in the past and may have valuable insights.
- Should keep in mind that practices on the neighbor island and Oahu are different. Committees must have a flexible approach in addressing the problems.

VII. NEXT MEETING

The next Commission meeting will be sometime in October. We will try to find a convenient date for the majority of members. In the meantime, the committees are urged to set up their meetings and begin their work. Aloha!

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of October 28, 2005

2:30 P.M. - 3:30 P.M.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Petra Bray, Judge Joseph Cardoza, Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley, Carol Mon Lee, Susan Oki Mollway, Carol Muranaka, Nathan Nikaido, Terence O'Toole, Wesley Park, Carole Richelieu, Judge Trudy Senda, and Calvin Young

HANDOUTS: (1) Meeting Notes of the Committee on Mandatory Continuing Legal Education
(2) Survey Information prepared by the Remedial Programs Committee
(3) Proposed New RSCH 2.24A

I. WELCOME

Chair Justice Duffy welcomed the members of the Commission, and then introduced Lyn Flanigan, Executive Director of the Hawai'i State Bar Association (HSBA). Justice Duffy stated that he has invited Ms. Flanigan to be an ex-officio member of the Commission and that she has been very helpful in our work to date.

II. RECAP OF FIRST MEETING

Justice Duffy gave a recap of the Commission's first meeting on April 29, 2005: we agreed that we needed to learn more about what the present situation is regarding professionalism in our community, and what other jurisdictions are doing, before we come up with recommendations, if any, to improve our system.

We set up committees to get this information, with the goal of reporting to the Commission as a whole in October, 2005 as to what the committees had learned. This is the "report back" meeting.

III. COMMITTEE REPORTS

A. Committee on Mandatory Continuing Legal Education

Co-chair Calvin Young summarized the information presented in the Committee Meeting Notes handout.

Among the highlights:

- “Professionalism” needs to be defined;
- a summary of HSBA CLE seminars from 1999-2005 was presented;
- a survey of all states regarding mandatory CLE was presented;
- Judges need to create an atmosphere in their courtrooms which promotes a higher level of practice; and
- while some law firms, lawyer’s organizations (ex. Consumer Lawyers of Hawaii), and governmental legal offices have their own in-house and external continuing legal education programs and policies, such CLE opportunities may not be available to solo practitioners and members of small firms.

Mr. Young concluded that the committee is still questioning whether continuing legal education should be mandatory.

B. Remedial Programs Committee and the Lawyers Regulation Committee

Co-chair (Remedial Programs Committee) Justice Duffy related that these two committees had joined together (at Justice Levinson’s suggestion) because of the overlap in the committees’ areas of concern. Justice Duffy referred to the Survey Information handout regarding his interviews with representatives of the William S. Richardson School of Law (Law School), the Hawai’i Supreme Court Board of Examiners (Bar Examiners), the Hawai’i Professionalism Course, the HSBA, and the Office of Disciplinary Counsel (ODC). The following members were asked to comment on the information: Carol Mon Lee (Law School), Carole Richelieu (Bar Examiners), Calvin Young (Professionalism Course), Lyn Flanigan (HSBA), and Carole Richelieu (ODC).

Among the highlights:

- the Law School attempts to “weed out” applicants who present potential character issues;
- the Law School’s three-day Orientation Program includes the introduction of ethical and professionalism issues, and a speech by Chief Justice Moon before administering the Law Student’s

Pledge, which specifically refers to the importance of integrity, professionalism, and civility;

- successful completion of a three-credit course in "Professional Responsibility" is required for graduation, and issues involving ethics and professionalism are generally included in substantive law courses and in the Law School's clinical programs;
- the Law School's Student Handbook addresses ethical and professionalism issues;
- the Hawai'i Bar Exam specifically tests the examinee's knowledge of the Hawai'i Rules of Professional Conduct;
- in addition to the Bar Exam test, bar applicants must separately pass the Multistate Professional Responsibility Examination;
- pursuant to Rule 1.14 of the Rules of the Supreme Court of Hawai'i, each person licensed after July 1, 2001 to practice law in Hawai'i must complete a Hawai'i Professionalism Course (administered by the HSBA) no later than one year after admission to the Bar or be administratively suspended;
- in addition to the Hawai'i Professionalism Course, the HSBA offers a number of CLE seminars throughout the year, but very few are offered on the subject of legal ethics and professionalism because they have been poorly attended and are difficult to organize due to lack of interest (and are not usually profitable financially);
- the HSBA is offering a day-long seminar entitled "Solo & Small Firm Practitioner Conference" on December 12, 2005, which will address legal ethics conflict issues;
- the HSBA has contracted with local attorney Evan Shirley to write a book on the subject of legal ethics and professionalism in Hawai'i;
- the HSBA has expressed an interest in developing "diversionary" programs in conjunction with the ODC;
- the ODC currently has twenty formal opinions which provide information on ethical and professionalism issues; additional information on these issues is available through ODC via informal telephone opinions, written opinions, Hawai'i Bar Journal articles, responses to requests for information, and presentations and participation in seminars at the Law School, Inns of Court, and other organizations.

IV. PROPOSED NEW RULE 2.24A OF THE RULES OF THE SUPREME COURT (RSCH)

Carole Richelieu distributed a proposed new RSCH 2.24A entitled Mandatory Audit of Trust Accounts which she drafted as a result of discussions in the combined Remedial Programs and Lawyers Regulation Committees. The

proposed new rule will be further studied by the combined committees before presentation to the Commission as a whole for consideration.

V. NEXT STEP AND GOAL

The members agreed with the following game plan proposed by Justice Duffy:

1. the committees continue to meet separately, and come up with recommendations for the Commission as a whole to consider;
2. the Commission meet in February, 2006 to discuss the recommendations of each committee, and (hopefully) reach a consensus on recommendations by the Commission to the Supreme Court; and
3. on or before March 14, 2006, the one-year anniversary date of the Commission's existence, a report be delivered to Chief Justice Moon regarding the work completed in our first year, together with any recommendations the Commission has.

VI. NEXT MEETING

Consistent with the above-stated Next Step and Goal, the next Commission meeting will be sometime in February, 2006. We will try to find a convenient date for the majority of members. In the meantime, the committees are urged to set up a meeting in preparation for the next Commission meeting. Aloha!

HAWAII SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of February 17, 2006

2:30 P.M. - 3:30 P.M.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Judge Joseph Cardoza, Associate Judge Daniel Foley, Grace Kido, Associate Justice Steven Levinson, Judge Susan Oki Mollway, Michael Nauyokas, Nathan Nikaido, Terence O'Toole, Wesley Park, Judge Karen Radius, Carole Richelieu, Judge Trudy Senda, Judge Terence Yoshioka, and Calvin Young

HANDOUTS: (1) Agenda
(2) RSCH 2.7(b)(3)
(3) Recommendation "A"
(4) Recommendation "B"
(5) 1996 Order Approving Referral Agencies
(6) Minutes of Joint Committee on Lawyer Regulation and Remedial Programs Meeting of January 11, 2006

I. WELCOME AND ANNOUNCEMENTS

Justice Duffy welcomed the members and thanked Petra Bray for her enthusiastic commitment to the Commission. Petra and her husband have left Hawai'i to be closer to their children on the mainland. Petra was one of the public, non-lawyer members of the Commission who was recommended by the League of Women Voters, and the League has been asked to recommend Petra's replacement.

II. RECAP OF LAST MEETING

In our last meeting on October 28, 2005, it was agreed that (1) our Committees would continue to meet separately, and come up with recommendations for the Commission as a whole to consider, and (2) we would forward our recommendations to the Hawai'i Supreme Court for their consideration, together with a report on the Commission's first year of work, on or before March 14, 2006 (one-year anniversary of the Commission).

III. RECOMMENDATIONS OF THE JOINT COMMITTEE ON LAWYER REGULATION AND REMEDIAL PROGRAMS

A. Justice Duffy and Justice Levinson led a discussion on Recommendation "A," the proposed "Order Approving Referrals Relating to Minor Misconduct" which they co-drafted. The rationale for Recommendation "A" set forth in the appended Agenda was discussed in detail. Two suggestions arose during the discussion. First, the words "or referrals" should be added at the end of numbered paragraphs 1 and 2 (additions shown as underlined):

1. Hawai'i State Bar Association (HSBA), including any agencies, entities, programs, or individuals, with which or whom the HSBA has arranged for the provision of services or referrals;
2. Attorneys and Judges Assistance Program (AAP), including any agencies, entities, programs, or individuals (whether located in Hawai'i or elsewhere), with which or whom the AAP has arranged for the provision of services or referrals;

Second, it should be made clear, by a written commentary or otherwise, that the language of Recommendation "A," (which "generically bundles" many agencies, entities, or programs) is not intended to exclude those agencies, entities, or programs which are specifically listed in the 1996 Order Approving Referral Agencies, and are still in existence.

The Commission members supported Recommendation "A."

B. Carole Richelieu led a discussion on Recommendation "B," the proposed revision of RSCH 2.24 which she drafted. The rationale for Recommendation "B" set forth in the appended Agenda was discussed in detail. It was noted that, unlike a prior draft, Recommendation "B" does not include language mandating an audit of the client trust account, nor does it impose "strict liability" on the attorney for the cost of the audit.

The Commission members supported Recommendation "B."

IV. RECOMMENDATIONS OF THE MANDATORY CONTINUING LEGAL EDUCATION COMMITTEE

Co-chairs Judge Foley and Calvin Young reported that the Mandatory Continuing Legal Education Committee, after much study and discussion, is recommending that Hawai'i not adopt mandatory continuing legal education at this time. The rationale for this recommendation is set forth in the Committee's meeting notes distributed in the Commission's October 28, 2005 meeting. The Committee, however, is strongly in support of the present Hawai'i Professionalism Course, which is mandatory (RSCH 1.14) for all new admittees to the bar. The Committee also recommends that Hawai'i consider creating a mandatory refresher course on Professionalism and Ethics in the future.

The course could be presented by Internet access, with an interactive component, and quiz. The advantage of such a course would be convenience, low cost, and avoidance of the logistical difficulties in presenting the course to the entire bar. Judge Foley and Calvin Young also reported that the Committee had the following observations/suggestions: (1) the judges can do more to encourage professionalism by the attorneys in their courts. Judge Foley indicated that this suggestion may be presented in a future Judicial Education Conference; (2) while larger law firms and government agencies provide "in-house" or other opportunities for continuing legal education, these opportunities are generally not as available to smaller law firms and solo practitioners; and (3) the Committee intends to work with the HSBA to identify CLE courses which the HSBA members may want or need.

The Commission members supported the recommendations of the Mandatory Continuing Legal Education Committee.

V. NEXT STEP

Justice Duffy will draft a report to Chief Justice Moon regarding our above-described Recommendations, and the Commission's first year of work. The draft will be presented to the Committees' co-chairs for review, revision, and signature before forwarding to Chief Justice Moon.

The Committees will continue to meet separately, with the next Commission meeting to be determined later.

Thank you for your enthusiasm and help! It's been a great first year!

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

February 17, 2006

Supreme Court Conference Room

Agenda

- I. WELCOME AND ANNOUNCEMENTS
- II. RECAP OF LAST MEETING
- III. RECOMMENDATIONS OF JOINT COMMITTEE ON LAWYER REGULATION AND REMEDIAL PROGRAMS:
 - A. Amend 1996 Order Approving Referral Agencies regarding minor misconduct referrals made pursuant to RSCH 2.7(b)(3) as indicated in the draft identified as Recommendation "A".

**** Why recommended:** the proposed Order would broaden the prior list of agencies, entities, programs, and individuals which are authorized for referrals pursuant to RSCH 2.7(b)(3) for non-disciplinary proceedings for minor misconduct. The intent of this change is to encourage the Office of Disciplinary Counsel (ODC) and the Hawai'i State Bar Association (HSBA) to work together to divert minor misconduct matters to non-disciplinary proceedings, as authorized by RSCH 2.7(b)(3). Such diversion would be mutually beneficial; the HSBA members affected would be referred to appropriate service providers who would assist the lawyer to deal with the cause of the minor misconduct, or resolve a dispute which led to the ODC complaint, and the ODC would be able to focus its resources on misconduct which is not minor.
 - B. Amend RSCH 2.24 as indicated in draft identified as "Recommendation "B".

**** Why recommended:** The Office of Disciplinary Counsel is spending a significant portion of its time and budget resources on audits arising out of attorney's mishandling of client trust account funds. At present, the audits take an average of 40-80 hours to complete, and the cost of the audit is borne by all of the HSBA members thru their ODC assessment. The intent of the proposed amendment to RSCH 2.24 is to shift the cost of an audit of the attorney's trust account to the attorney audited unless there is clear and convincing evidence that the financial institution erred. Note: It is discretionary with the ODC as to whether the trust account will be audited, as there may be situations where the attorney provides a satisfactory explanation for the trust account discrepancy, which obviates the necessity of an audit.
- IV. RECOMMENDATIONS OF THE MANDATORY CONTINUING LEGAL EDUCATION COMMITTEE
- V. NEXT MEETING

dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Counsel until the accused attorney shall have been afforded the opportunity to state his or her position with respect to the allegations against him or her.

(4) To file with the supreme court certificates of conviction of attorneys for crimes.

(5) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees or officer, the Board and the supreme court.

(6) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, to examine witnesses and to submit evidence, if any, relevant thereto.

(7) To inform complainants and attorneys complained against of the status and disposition of their respective complaint matters.

(8) To maintain permanent records of all matters processed and the disposition thereof.

(9) To assist members of the public in preparation of requests for investigation.

(10) To perform such other duties and provide such reports as the Board shall direct. (Renumbered September 1984; amended October 27, 1989, effective November 1, 1989, subject to transitional orders; further amended February 7, 1992, effective February 7, 1992; further amended August 17, 1993, effective August 17, 1993; further amended and effective January 9, 1996.)

CASE NOTES

Private practice of law. — Trustees appointed pursuant to this rule are not authorized or empowered to intervene in legal affairs of clients whose files the trustees are appointed to inventory unless ordered to do so by the Supreme Court, and when trustee is Disciplinary Counsel or Assistant Disciplinary Counsel, trustee is specifically prohibited from engaging

in practice of law other than in that capacity. *Office of Disciplinary Counsel v. Cusmano*, 2000 Haw. LEXIS 237, 93 Haw. 411, 4 P.3d 1109 (2000).

Cited in *In re Disciplinary Bd. of Haw. Supreme Court*, 91 Haw. 363, 984 P.2d 688 (1999).

Rule 2.7. Procedure.

(a) *Investigation.* All investigations, whether upon complaint or otherwise, shall be conducted under the supervision of Counsel. Upon the conclusion of an investigation, Counsel shall recommend dismissal, informal admonition of the attorney concerned, the institution of non-disciplinary proceedings for minor misconduct, or the institution of formal disciplinary proceedings before a hearing committee or officer. Counsel's recommendation shall be reviewed by one of the two members of the Board assigned for that purpose. If the initial reviewing member of the Board approves Counsel's recommendation, it shall be implemented. If the reviewing member of the Board disapproves Counsel's recommendation, Counsel may request further review by the other reviewing member of the Board. In the event of such second review of Counsel's recommendation, the decision by the second reviewing member of the Board shall be final. The member or members of the Board who review Counsel's recommendation shall be disqualified in any formal disciplinary proceedings in relation to the same alleged misconduct.

(b) *Minor misconduct.*

(1) Notwithstanding the provisions of Rules 2.2 and 2.3, any act or omission by an attorney which, although violative of the Code of Professional Responsibility, is of a minor nature may be resolved by way of non-disciplinary proceedings or dismissal.

(2) In the absence of unusual circumstances, misconduct shall not be regarded as minor if any of the following conditions exists:

(i) The misconduct involved misappropriation of a client's funds or property.

(ii) The misconduct resulted in or is likely to result in actual prejudice (loss of money, legal rights, or valuable property rights) to a client or other person.

(iii) The respondent was publicly disciplined within the past three (3) years.

(iv) The misconduct involved is of the same nature as misconduct for which the respondent was disciplined within the past five (5) years.

(v) The misconduct included dishonesty, misrepresentation, deceit, or fraud on the part of the respondent.

(vi) The misconduct constituted the commission of a felony under applicable law.

(3) Subject to the provisions of Rule 2.7(a), Counsel shall, in Counsel's sole discretion, exclusively determine whether a matter constitutes minor misconduct. In that event, Counsel may reach agreement with the respondent to submit the matter to non-disciplinary proceedings. Such proceedings may consist of fee arbitration, arbitration, mediation, lawyer practice assistance, substance abuse recovery programs, psychological counseling, or any other non-disciplinary proceedings authorized by the supreme court. Counsel shall then refer the matter to the agency or agencies authorized by the court to conduct the proceedings.

(4) If Counsel shall fail to reach agreement with the respondent to submit the matter of non-disciplinary proceedings, Counsel may undertake or resume disciplinary proceedings.

(5) If the respondent shall fail to comply with the terms of the agreement, Counsel may undertake or resume disciplinary proceedings.

(6) If the respondent shall fulfill the terms of the agreement, Counsel shall dismiss the disciplinary proceedings.

(c) *Formal hearing.* Formal disciplinary proceedings shall be instituted by Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent in accordance with Rule 2.11 (a). Notwithstanding Rule 2.22, if at the time the petition is served, the respondent is engaged in the act of the practice of law as a part of a firm, partnership, corporation or governmental entity or other group, Counsel shall provide a notice to the respondent's employer of the fact that formal disciplinary proceedings have been filed with the Board. The respondent shall serve his or her answer upon Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Board Chairperson. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer or upon

RECOMMENDATION "A"

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Approval)
of Agencies to Which Referrals)
May be Made Pursuant to Rule)
2.7(b)(3) of the Rules of the)
Supreme Court of the State of)
Hawai'i)
_____)

ORDER APPROVING REFERRALS RELATING TO MINOR MISCONDUCT

Upon consideration of Disciplinary Counsel's request for approval of agencies to which referrals may be made pursuant to Rule 2.7(b)(3) of the Rules of the Supreme Court of the State of Hawai'i,

IT IS HEREBY ORDERED that the following agencies, entities, programs, or individuals are authorized, subject to the approval of Counsel in any given case, for referrals pursuant to Rule 2.7(b)(3):

1. Hawai'i State Bar Association (HSBA), including any agencies, entities, programs, or individuals, with which or whom the HSBA has arranged for the provision of services;
2. Attorneys and Judges Assistance Program (AAP), including any agencies, entities, programs, or individuals (whether located in Hawai'i or elsewhere), with which or whom the AAP has arranged for the provision of services;
3. Hawai'i licensed physicians (including, but not limited to, psychiatrists) and/or psychologists;
4. Certified Public Accountants and/or other allied accounting professionals;
5. Continuing legal education or professionalism courses and/or programs;

6. Mediation, arbitration, or other forms of alternative dispute resolution; and
7. Any other agencies, entities, programs, or individuals, not otherwise enumerated above, that are deemed appropriate under the circumstances.

This order supercedes this court's Order Approving Referral Agencies, dated January 23, 1996.

DATED: Honolulu, Hawai'i,

FOR THE COURT:

Chief Justice

RECOMMENDATION "B"

[NOTE: CHANGES RECOMMENDED ARE UNDERLINED (TO BE ADDED TO) OR
LINED-OUT (TO BE DELETED).]

2.24. Audit of Trust Accounts.

(a) When Audit May be Ordered. Upon occurrence of any of the following, the Chairperson may order an audit of any trust accounts maintained by an attorney:

(1) Failure to file the trust account verification required under authority of Rule 1.15 of the Hawai'i Rules of Professional Conduct;

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

(32) A petition for creditor relief is filed on behalf of an attorney;

(43) Felony charges are filed against an attorney;

(54) 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 on the grounds of incompetence or disability;

(65) A claim against the attorney is filed with the Lawyers' Fund for Client Protection;

(76) Upon court order, or

(87) When requested for other good and sufficient reasons by Counsel, a hearing committee or officer, or the Board.

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

~~(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.~~

(c) When Audit is Authorized. When an attorney's trust account check is paid against insufficient funds or dishonored or an attorney's trust account balance is below zero that trust account may be audited under the supervision of Counsel.

(d) Cost of Audit. Audits conducted in any of the circumstances enumerated in paragraph (a) 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 any of the circumstances enumerated in paragraph (c) shall be at the cost of the attorney audited unless there is clear and convincing evidence that the financial institution erred.

(e) 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.

Appendix

“H”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Approval)
of Agencies to Which Referrals)
May be Made Pursuant to Rule)
2.7(b) (3) of the Rules of the)
Supreme Court of the State of)
Hawai'i)

HONORABLE JUSTICE
GLORIA S. SAKABO
CLERK OF THE SUPREME COURT

JAN 23 10 55 AM '98

FILED

ORDER APPROVING REFERRAL AGENCIES

Upon consideration of Disciplinary Counsel's request for approval of agencies to which referrals may be made pursuant to Rule 2.7(b) (3) of the Rules of the Supreme Court of the State of Hawai'i,

IT IS HEREBY ORDERED that the following agencies or types of agencies are approved for referrals pursuant to Rule 2.7(b) (3):

1. Hawai'i State Bar Association (HSBA) Referral Program for Problem Lawyers;
2. Young Lawyers Division Lawyer Kokua/Mentor Program;
3. Attorneys and Judges Assistance Program;
4. Alcoholics Anonymous;
5. Any licensed treatment center for alcohol and/or substance abuse;
6. Hawai'i licensed psychiatrists and/or psychologists;
7. William S. Richardson School of Law, University of Hawai'i or any other law school accredited by the American Bar Association;

8. Continuing legal education courses sponsored or administered by the HSBA, the Hawai'i Institute for Continuing Legal Education, the Pacific Law Institute, the American Bar Association, or approved for continuing legal education credit by a state supreme court;
9. Center for Alternative Dispute Resolution;
10. American Arbitration Association; and
11. Neighborhood Justice Center.

DATED: Honolulu, Hawai'i, January 23, 1996.

FOR THE COURT:


Chief Justice

