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SCRU-11-0000068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

ORDER AMENDING RULES 2.19 AND 2.22 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 2.19 and 2.22 of the Rules of the Supreme Court of the State of Hawai'i are amended, effective July 1, 2016, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 2. DISCIPLINARY RULES.

* * *

2.19. Proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated.

(c) If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness, or because of the use of drugs or intoxicants, which makes it impossible for the respondent to defend himself or herself adequately, the supreme court thereupon shall enter an interim order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of (b) above. If the supreme court shall determine that the respondent is not incapacitated from practicing law, it shall take such

action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(d) The Board shall cause a notice of interim or final transfer to inactive status to be published in a newspaper of general circulation in the judicial circuit in which the disabled attorney maintained his or her practice and shall further cause a notice of a return to active status to be similarly published.

(e) The Board shall promptly transmit a certified copy of the interim or final order of transfer to inactive status to all judges of the State of Hawai'i and shall request such action under the provisions of Rule 2.20 of these Rules as may be indicated in order to protect the interests of the disabled attorney and his or her client.

(f) No attorney transferred to inactive status under the provisions of this [r]Rule may resume active status until reinstated by order of the supreme court. Any attorney transferred to inactive status under the provisions of this [r]Rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the supreme court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the supreme court upon a showing that the attorney's disability has been removed and he or she is fit to resume the practice of law. Upon such application, the supreme court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the supreme court shall designate. In its discretion, the supreme court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above, and, thereafter, in proceedings duly taken, he or she has been judicially declared to be competent, the supreme court may dispense with further evidence that his or her disability has been removed and may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(h) Transfer of an attorney to inactive status pursuant to this [r]Rule shall not preclude Counsel's investigation of the attorney's conduct, including but not limited to, the gathering and preserving of evidence, provided that no disciplinary proceeding shall be commenced and any pending disciplinary proceeding against the attorney shall be held in abeyance while the attorney remains on inactive status pursuant to this [r]Rule.

(i) Pursuant to Rule 2.22(f) of these Rules, the record of proceedings undertaken pursuant to this Rule shall be confidential, except for interim and final orders transferring an attorney to inactive status, and any subsequent order returning the attorney to active status.

2.22. Confidentiality.

(a) **General rule.** The files, records and proceedings of the Board, the hearing committees or officers, and Counsel, and of mentors participating in minor misconduct programs pursuant to Rule 2.7(b) of these Rules, as they may

relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of an attorney, shall be deemed confidential and shall not be disclosed except under the following circumstances:

(5) Where required or permitted by these [r]Rules;

(8) Where reinstatement proceedings are initiated pursuant to Rule 2.17(c) of these Rules.

(d) Disclosure of resignation affidavit. An affidavit resigning in lieu of discipline or consenting to disbarment submitted pursuant to Rule 2.14 of these Rules shall be submitted to the hearing committee or officer, to the Board, and to the supreme court at any time that the attorney applies for reinstatement. Such affidavit shall also be supplied to an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice.

(f) Supreme Court records are generally public. Except as ordered by the supreme court, or as otherwise provided by these [r]Rules, the files, records and proceedings filed with the supreme court by the Board, by Counsel or by a respondent, as well as any oral argument held before the supreme court in connection with any disciplinary proceedings, are not confidential, except that in proceedings under Rule 2.19 of these Rules [proceedings], [~~a final~~] any order transferring an attorney to inactive status or subsequently to active status shall be a matter of public record, but otherwise, the record of the proceedings shall not be publicly disclosed.

DATED: Honolulu, Hawai'i, March 7, 2016.

/s/ Mark E. Recktenwald
/s/ Paula A. Nakayama
/s/ Sabrina S. McKenna
/s/ Richard W. Pollack
/s/ Michael D. Wilson

