

Electronically Filed
Supreme Court
SCRU-11-0000068
29-JAN-2019
09:59 AM

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 RULE 2.20 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 Rule 2.20 of the Rules of the Supreme Court of the State of Hawai'i is amended, effective July 1, 2019 as follows (deleted materials is bracketed and stricken; new material is underscored):

2.20. Trustee proceedings.

(a) Grounds for appointment of trustee. Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, or has been suspended or disbarred and has not complied with Rule 2.16 of these Rules, or there is other good cause exhibiting an attorney's inability to protect the interests of the attorney's clients, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the supreme court, upon proper proof of the fact, shall appoint an attorney as trustee to inventory the files of the inactive, disappeared, deceased, suspended, or disbarred attorney and to take such action as seems indicated to protect the interests of that attorney's clients.

When appointment of a trustee is warranted, Counsel shall file with the supreme court a motion for appointment of an attorney to serve as trustee. Trustees may receive compensation for their services, and may be reimbursed for traveling and other expenses incidental to the performance of their duties.

(b) Confidentiality. A trustee shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the supreme court's order appointing the attorney to make such inventory and cooperate in investigations by Counsel or the Lawyers' Fund for Client Protection (Fund).

(c) Duties of trustees.

(1) A trustee appointed under this rule shall:

(i) take custody of all client files and records of the attorney;

(ii) publish [~~one~~(1)] advertisement in a newspaper of general circulation announcing that the trustee has been appointed to inventory the attorney's client files, that the attorney's clients may contact the trustee to retrieve their files within the time specified in the advertisement, and that unclaimed items will be destroyed;

(iii) send form notices by regular mail to all of the attorney's clients, informing them of the attorney's status and that those clients may obtain their files by contacting the trustee at an address and telephone number specified in the notices; and

(iv) obtain and maintain written records and verification of all files released to the attorney's clients.

(2) A trustee appointed under this rule may:

(i) employ locksmiths to open the attorney's present and former law offices, as well as open any safes, cabinets, closets, or other secured areas located within the attorney's present and former law offices and any other areas under the attorney's control (if necessary in the discretion of the trustee);

(ii) take possession of any trust and other bank accounts found or known to exist, determine amounts therein and amounts due the clients for whom the accounts are held, and seek orders from the supreme court for disbursement of amounts due to the clients;

(iii) if the trustee is designated by the trustees of the Fund to act on behalf of the trustees for the Fund, cause subpoenas to be issued pursuant to Rule 10.6 of these Rules and authorize [~~his or her~~] the trustee's staff to have access to the attorney's business and banking records to consult with and advise the Fund Trustees concerning the validity and propriety of claims brought by the attorney's clients against the Fund;

(iv) employ accountants and bookkeepers as necessary to determine the source and ownership of funds recovered by the trustee;

(v) upon approval by the Disciplinary Board, place any unclaimed files in storage (in the custody of the Disciplinary Board); or

(vi) take such further action as the supreme court directs.

(d) Disposition of unclaimed files. Following discharge of the trustee, the attorney's client files shall be stored by Counsel for a period of [~~one~~(1)] year. At any time thereafter, Counsel may publish a legal notice in a newspaper of general circulation announcing that the attorney's client files will be destroyed in [~~thirty~~(30)] days if unclaimed. Counsel shall file reports annually as to the status of any matter that is pending final disposition, and at the conclusion of this

process, file a final report as to the disposition of the files and a determination that the matter is closed.

Upon expiration of the [~~thirty~~(30)] day period, Counsel may destroy any unclaimed files which, in the exercise of discretion, Counsel concludes do not contain original documents of value to the attorney's clients.

(e) Suspension during the trusteeship. Upon appointment of a trustee, the attorney whose files are the subject of the trusteeship may, by order of the supreme court, be suspended from the practice of law in this state until the trusteeship is completed.

(f) Responsibility for fees and costs incurred. The subject attorney or [~~his or her~~] the subject attorney's estate may be required to pay to the Board all trustee fees and costs ordered and incurred, together with interest at the Hawai'i statutory judgment rate.

DATED: Honolulu, Hawai'i, January 29, 2019.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

