

RE: **Proposal to Amend Rule 2.3(a) of the Rules of the Supreme Court of the State of Hawai'i**

*AUTHORIZING DIRECT IMPOSITION OF
LESSER DISCIPLINES BY THE SUPREME COURT*

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 2.3(a) of the Rules of the Supreme Court of the State of Hawai'i. The proposal would authorize the supreme court to impose the lesser disciplines of a public reprimand, a private reprimand, or a private informal admonition in disciplinary matters referred to it by the Disciplinary Board of the Hawai'i Supreme Court, without the necessity of remanding the matter to the Board or securing the consent of both parties. The proposal is attached hereto.

Comments about the proposed amendment should be submitted, in writing, **no later than Friday, June 21, 2019**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENT OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(New material is underlined)

Rule 2. DISCIPLINARY RULES.

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2.3. Types of discipline.

(a) Discipline may consist of:

- (1) Disbarment by the supreme court; or
- (2) Suspension by the supreme court for a period not exceeding five years; or
- (3) Public censure by the supreme court; or
- (4) Public reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or
- (5) Private reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or
- (6) Private informal admonition by Disciplinary Counsel or Disciplinary Board.

A public or private reprimand, or a private informal admonition, may also be imposed directly by the supreme court in any disciplinary matter submitted to the court by the Disciplinary Board, without requiring consent of the parties.

(b) Where a respondent has, with the written concurrence of the Director of the Attorneys and Judges Assistance Program, proposed a program of monitoring of the respondent's efforts toward rehabilitation from "substance abuse" (as that term is defined in Rule 16.1(a) of these [r]Rules), the supreme court or the Board may impose such a monitoring program. The monitoring program, which shall in all cases be supervised by the Director of the Attorneys and Judges Assistance Program, may be in lieu of or in addition to a disciplinary sanction. The duration and conditions of monitoring shall be stated in the final order issued by the supreme court or the Board. Violation of any conditions shall result in the imposition of disciplinary sanctions, but only to the extent set forth in the order establishing the monitoring program.

(c) Restitution and/or payment of costs (exclusive of attorney's fees) may also be ordered by the supreme court or by the Board. Counsel shall file its verified bill of costs within 60 days after imposition of discipline.

(d) As a condition of reinstatement following suspension or disbarment or as a condition in connection with the imposition of any lesser discipline, the Disciplinary Board or the supreme court may require a respondent, at the respondent's expense, to successfully complete (i) the bar examination or some portion of it, (ii) seminars or classes in particular subjects of the law, (iii) a program specifically designated by the Board or the supreme court to meet some deficiency in the attorney's understanding of the law or the practice of it, (iv) a practice management audit, and/or (v) a trust account audit. In addition, the

Disciplinary Board or the supreme court may order the return to the client of all unearned fees or funds and unused deposits against future costs. The Board may consult with the Hawai'i State Bar or others to find or develop such seminars, classes, and programs.

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