

RE:           **Proposal to Amend Rule 6 of the Rules of the Supreme Court of the State of Hawai'i**

TO COMPORT WITH *SHEVELAND v. WELLS FARGO BANK et. al.* (SCAP-17-325)

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 6 of the Rules of the Supreme Court of the State of Hawai'i to clarify the allowed ownership structure of Lawyer's Professional Business Organizations, in light of the court's recent decision in *Sheveland v. Wells Fargo Bank et al.*, SCAP-17-325 (March 18, 2019).

The proposal is attached hereto.

Comments about the proposed amendment should be submitted, in writing, **no later than Friday, July 19, 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**  
(Deleted material is bracketed and stricken, new material is underlined)

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**Rule 6. LAWYER'S PROFESSIONAL BUSINESS ORGANIZATIONS.**

(a) **Compliance with this rule and applicable statutes.** Any person or persons seeking to practice law as a corporation, a company, an association, in partnership, or in some other lawful organizational form (hereafter, lawyers' professional business organization) shall comply with the provisions of this [r]Rule and if applicable statutes.

(b) **Name.** Subject to any additional statutory restrictions or requirements, the name under which a lawyers' professional business organization practices law shall accord with the provisions of the Hawai'i Rules of Professional Conduct governing law firm names and shall also include the words "A Law Corporation," "A Limited Liability Law Company," "A Limited Liability Law Partnership," or other appropriate designation, whenever applicable.

(c) **Limitation to the practice of law.** A lawyers' professional business organization shall be organized only for the purpose of rendering legal services and services ancillary thereto. A lawyers' professional business organization may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, so long as such investment does not violate any provision of the Hawai'i Rules of Professional Conduct and does not involve the lawyers' professional business organization in substantial business activity unrelated to the practice of law.

(d) **Shares; ownership and transfer.**

(1) Shares or interests in a lawyers' professional business organization may be owned only by a lawyers' professional business organization or by one or more persons licensed to practice law in this state ~~[by this court]~~ or any other state or territory of the United States or the District of Columbia, provided that shares may be transferred by a shareholder to a revocable living or inter vivos trust subject to statutory conditions and subject to the additional condition that any such trust shall terminate if the shareholder is disqualified from the practice of law.

(2) The shares or interests of a lawyers' professional business organization owned by a person who dies or who becomes a disqualified person shall be acquired by the lawyers' professional business organization, or by its remaining shareholders or partners, or by one or more persons licensed to practice law in this state ~~[by this court]~~ or any other state or territory of the United States or the District of Columbia, in accordance with statutory procedures.

(3) The requirements of subsections (d)(1) and (d)(2) of this [r]Rule shall be set forth in the lawyers' professional business organization's articles of incorporation, by-laws, partnership agreements, or other such organizational documents.

(4) The share certificates or other memorializations of ownership interests in a law corporation lawyers' professional business organization shall contain an appropriate legend setting forth the restrictions set forth in subsections (d)(1) and (d)(2) of this [r]Rule.

(5) The by-laws of a lawyers' professional business organization shall provide that the income of a lawyers' professional business organization that are attributable to its practice of law while a shareholder is a disqualified person shall not in any manner accrue to the benefit of such shareholder or ~~[his or her]~~ the shareholder's shares or interests in the lawyers' professional business organization.

**(e) Directors.** Notwithstanding any statutory provisions, each director of a lawyers' professional business organization shall be licensed to practice law in this state ~~[by this court]~~ or any other state or territory of the United States or the District of Columbia. A lawyers' professional business organization that has only one shareholder need have only one director who shall be such shareholder.

**(f) Officers.** Notwithstanding statutory provisions, each officer of a lawyers' professional business organization shall be licensed to practice law in this state ~~[by this court]~~ or any other state or territory of the United States or the District of Columbia, except as provided in this subsection (f). If a lawyers' professional business organization is incorporated with a single shareholder and single director after July 1, 1987, or if a lawyers' professional business organization converts to having a single shareholder and a single director after that date, the person or persons holding the offices of secretary and treasurer need not be licensed. If a lawyers' professional business organization had a single shareholder and single director prior to July 1, 1987, the person or persons holding the offices of vice-president and secretary need not be licensed, in which event the offices of president and treasurer shall be held by the sole shareholder as previously required by this [r]Rule. An unlicensed person, even if permitted to serve as an officer pursuant to this [r]Rule, shall in no event serve as a director or be a shareholder of a lawyers' professional business organization.

**(g) Financial responsibility.**

(1) LIABILITY NOTICE. Except as provided in subsection 2 of this section (g), the articles of incorporation or partnership agreement of a lawyers' professional business organization, its by-laws and all of its share certificates or other instruments of ownership shall clearly specify that, notwithstanding any other provision of law, the financial responsibility of persons licensed to practice law in this state is not limited by reason of being shareholders, officers, directors, or partners of the lawyers' professional business organization and that the liability of shareholders, officers, directors, or partners, for the acts, errors and omissions of the shareholders, officers, directors, partners, or other employees of the lawyers' professional business organization arising out of the performance of professional services by the lawyers' professional business organization while they are shareholders, officers, directors, or partners is joint and several to the same extent as if the shareholders, officers, directors, or partners were general partners engaged in the practice of law, provided, however, that this subsection (g) shall not apply to any unlicensed person who serves as an officer in accordance with subsection (f) of this [r]Rule.

(2) **GENERAL RULE ON LIABILITY.** If the lawyers' professional business organization maintains errors and omissions coverage in amounts not less than \$100,000 for each attorney in the organization or not less than \$5,000,000 for the lawyers' professional business organization and if permitted by statute, the professional liability of each shareholder or partner or attorney employed in a lawyer's professional business organization is limited to responsibility for the attorney's own performance of professional services.

(3) **UNACCEPTABLE ERRORS AND OMISSIONS COVERAGE.** Errors and omissions coverage is insufficient to meet the requirements for limiting liability if the combined coverage of any insurance policy or surety bond is less than the full amount required by this [r]Rule or any higher statutory amount, or is subject to a deductible greater than [~~ten per cent (10%)~~] 10 percent of the minimum amount of security necessary to meet the requirements of subsection (g)(2) of this [r]Rule, or is conditioned upon any contingency other than payment of the premium or fee or provides in any manner for less than the full amount of coverage required by this [r]Rule or any higher amount required by statute.

**(h) Compliance with law and rules of court.** The affairs of a lawyers' professional business organization shall be conducted in compliance with law and with the rules of this court. The organization shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, this court. Nothing in this [r]Rule shall affect or impair the disciplinary powers of this court over any lawyers' professional business organization or over any person licensed to practice in this state by this court.

**(i) Attorney-client relationship unchanged.** Nothing in this [r]Rule shall be construed to alter or affect the professional relationship between a person furnishing legal services and a person receiving such services, and all such professional relationships enjoyed under the laws of this state or the rules of this court, whether now in existence or hereafter enacted, shall remain inviolate.

**(j) Discipline and enforcement.** Any attorney who fails to comply in good faith with the provisions of this [r]Rule may be subject to investigation and discipline pursuant to the attorney discipline procedures set forth in Rule 2 of [~~the~~] these [r]Rules [~~of this court~~], provided that this shall not be construed as limiting the powers of the Bar, appropriate government agencies, interested parties and the courts of this state to enforce any statute and rules promulgated thereunder.