

RE: **Proposal to Amend Rule 2.14 of the Rules of the Supreme Court of the State of Hawai'i**

**AFFIDAVITS SUBMITTED DURING THE
DISCIPLINARY RESIGNATION PROCESS ARE PUBLIC**

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 2.14 of the Rules of the Supreme Court of the State of Hawai'i in order to clarify that affidavits submitted by attorneys resigning in lieu of discipline are public records, but not available for use in other proceedings without the express permission of the supreme court.

Comments about the proposed amendment should be submitted, in writing, **no later than Friday, October 16, 2020**, 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 TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(Deleted material is bracketed and stricken; new material is underlined)

RULE 2. DISCIPLINARY RULES

**2.14. Resignation in lieu of discipline or disbarment by
consent of attorneys under disciplinary investigation
or prosecution.**

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of grounds for ~~[his or her]~~the attorney's discipline may resign in lieu of discipline or consent to disbarment, but only by delivering to the Board Chairperson an affidavit stating that ~~[he or she]~~the attorney desires to resign in lieu of discipline or consent to disbarment and that:

(1) ~~[his or her]~~the attorney's resignation in lieu of discipline or consent is freely and voluntarily rendered; ~~[he or she]~~the attorney is not being subjected to coercion or duress; ~~[he or she]~~the attorney is fully aware of the implications of submitting ~~[his or her]~~the attorney's resignation or consent;

(2) ~~[he or she]~~the attorney is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for ~~[his or her]~~the attorney's discipline, the nature of which ~~[he or she]~~the attorney shall specifically set forth;

(3) ~~[he or she]~~the attorney acknowledges that the material facts so alleged are true; and

(4) ~~[he or she]~~the attorney resigns or submits ~~[his or her]~~the attorney's consent because ~~[he or she]~~the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, ~~[he or she]~~the attorney could not successfully defend ~~[himself or herself]~~themselves.

(b) Upon receipt of the required affidavit, the Board shall file with the supreme court and the supreme court shall enter an order granting the request to resign in lieu of discipline or disbarment of the attorney on consent.

(c) The order granting the request to resign in lieu of discipline or disbarment of the attorney on consent shall be a matter of public record. ~~[However, t]~~The affidavit required under the provisions of (a) above shall [not be made available for use] be a matter of public record but shall not be used in any other proceeding except upon order of the supreme court or as otherwise allowed by these rules.

(d) Resignation in lieu of discipline is a disbarment for all purposes under these rules, including reinstatement.