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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 2.16 and 2.19 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

IT IS HEREBY ORDERED that Rules 2.16 and 2.19 of the Rules of the Supreme Court of the State of Hawai'i are amended, effective July 1, 2021, as follows (deleted material is bracketed and stricken, new material is underscored):

Rule 2. DISCIPLINARY RULES.

2.16. Disbarred or suspended attorneys.

(e) The Board shall cause a notice of the suspension or disbarment to be published on the Board's or the Judiciary's public website or in a newspaper of general circulation in the judicial circuit in which the disciplined attorney practiced [~~or on the Board's or the Judiciary's public website~~] and shall further cause a notice of reinstatement under Rule 2.17 of these Rules to be similarly published.

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

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the supreme court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until further order of the supreme court. A copy of such order shall be served upon such attorney, ~~his or her~~ the attorney's guardian, and/or the director of the institution to which ~~he or she~~ the attorney has been committed in such manner as the supreme court may direct.

(b) Whenever the Board shall petition the supreme court to determine whether an attorney is incapacitated from continuing the practice of law by reason of physical or mental infirmity or illness or because of the use of drugs or intoxicants, the supreme court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the supreme court shall designate. If, upon due consideration of the matter, the supreme court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring ~~him or her~~ the attorney to inactive status on the ground of such disability for an indefinite period and until the further order of the supreme court.

The supreme court shall provide for such notice to the respondent attorney of proceedings in the manner as it deems proper and advisable and shall appoint an attorney to represent the respondent if ~~he or she~~ the attorney is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent contends that ~~he or she~~ the respondent 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 present an adequate defense ~~[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 on the Board's or the Judiciary's public website or in a newspaper of general circulation in the judicial circuit in which the disabled attorney ~~maintained his or her~~ practiced and shall further cause a notice of a return to active status to be similarly published.

(e) The Board or the court 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~~ the attorney's client.

(f) No attorney transferred to inactive status under the provisions of this Rule may resume active status until reinstated by order of the supreme court. Any attorney transferred to inactive status under the provisions of this 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~~ the attorney 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~~ the attorney has been judicially declared to be competent, the supreme court may dispense with further evidence that ~~his or her~~ the attorney's disability has been removed and may direct ~~his or her~~ the attorney's reinstatement to active status upon such terms as are deemed proper and advisable.

(g) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of ~~his or her~~ the attorney's disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since ~~his or her~~ the attorney's transfer to inactive status and ~~he or she~~ the attorney shall furnish to the supreme court written consent to each to divulge such information and records as requested by court-appointed medical experts.

(h) Transfer of an attorney to inactive status pursuant to this 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 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.

DATED: Honolulu, Hawai'i, June 16, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

