

**HAWAI'I SUPREME COURT
COMMISSION ON PROFESSIONALISM**

**SEVENTH REPORT TO THE
HAWAI'I SUPREME COURT**

Committee Members

The Honorable Richard W. Pollack, Chair
Susan Arnett, Member
The Honorable Joseph Cardoza, Member
Malcom Chang, Member
Steve Dixon, Member
The Honorable Daniel Foley, Member
David Hall, Member
Janet Hunt, Member
Grace Kido, Member
The Honorable Leslie Kobayashi, Member
Gayle Lau, Member
The Honorable Sabrina S. McKenna, Member
The Honorable Paul Murakami, Member
Nathan Nikaido, Member
Terence O'Toole, Member
Wesley Park, Member
Judith Pavey, Member
Jill Ramsfield, Member
The Honorable Trudy Senda, Member
The Honorable Barbara Takase, Member
Kevin Takata, Member
Calvin Young, Member

Report Submitted By:
The Honorable Richard W. Pollack, Chair

December 17, 2012

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

SEVENTH REPORT TO THE HAWAI'I SUPREME COURT

December 17, 2012

I. ESTABLISHMENT OF THE COMMISSION ON PROFESSIONALISM

The Commission on Professionalism (Commission) was established on March 14, 2005 by an Order of the Hawai'i Supreme Court signed by Chief Justice Ronald T.Y. Moon (Appendix A). Establishment of the Commission was recommended by the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan for Lawyer Conduct and Professionalism.

II. THE COMMISSION'S CHARGE

The Order establishing the Commission set forth its charge:

The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

- (a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;
- (b) identify barriers to implementation;
- (c) identify action steps to overcome barriers; and
- (d) propose a post-implementation evaluation process.

III. MEMBERS OF THE COMMISSION

The Members of the Commission consist of judges, practicing lawyers, law school faculty, representatives of entities regulating attorneys, and non-lawyer public members. Biographical information of the present Members is provided in Appendix B.

IV. COMMISSION MEETINGS

The Minutes of the Commission meeting on October 15, 2012 is presented in Appendix C.

V. STATUS REPORTS ON COMMISSION PROJECTS

A. Proposed Revisions to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i

Based on many years of study and discussion, on October 15, 2008, the Commission recommended to the Supreme Court that the Rules of the Supreme Court be amended to require mandatory continuing professional education.

On July 15, 2009, after receiving public comment, the Hawai'i Supreme Court filed an "Order Amending Rule 17 and Adopting New Rule 22 of the Rules of the Supreme Court of the State of Hawai'i, effective January 1, 2010.

In a letter dated September 13, 2012, Carol Muranaka, Hawaii State Bar Association's (HSBA) President, submitted to the Commission the recommendations of the HSBA Committee on Continuing Legal Education (HSBA CLE Committee) regarding Proposed Amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i (Proposed Amendments to Rule 22). The Proposed Amendments to Rule 22 included the following recommendations:

1. Every active bar member must complete at least 12 credit hours of approved Continuing Legal Education (CLE) courses or activities during each two-year reporting period;
2. Of the 12 credit hours, each active member must complete a minimum of two credit hours in ethics, which is defined as a course or activity covering the accepted principles of professional conduct and responsibility as established by the Hawai'i Rules of Professional Conduct;
3. One credit hour shall be a minimum of fifty minutes of instruction;

4. One of the methods to meet the CLE requirement is to write articles for the *Hawaii Bar Journal*, law review, or writing books in a scholarly or practical manner with two credit hours allowed for each 1,500 words published;
5. CLE courses and activities sponsored by an accredited provider, the HSBA, the American Bar Association (ABA), ABA-approved law schools or the Hawaii Access to Justice Commission qualify for credit; and
6. The HSBA shall liberally and reasonably construe Rule 22 of the Rules of the Supreme Court of the State of Hawai'i. The HSBA shall endeavor to charge only fees necessary to recover the costs of course materials, neighbor island travel for speakers, refreshment, room rental charges and the like.

A meeting of the Commission to consider the Proposed Amendments to Rule 22 was held on October 15, 2012. At the meeting, the co-chairs of the HSBA CLE Committee gave a presentation to the Commission regarding the Proposed Amendments to Rule 22. It was explained that a March 2012 letter by Judith Pavey, chair of HSBA's Mandatory Continuing Legal Education (MCLE) Board, to the Hawai'i Supreme Court that expressed the difficulty in distinguishing between voluntary and mandatory CLE under Supreme Court Rule 22 was the catalyst for initiating the process to consider amending the Rule.

The Commission was informed that the HSBA charged its CLE Committee to examine and, if appropriate, draft proposed amendments to Rule 22. The CLE Committee held several meetings to discuss increasing the number of hours over a specific reporting period. The CLE committee voted to propose amending Rule 22 from requiring each bar member to annually complete at least 3 credit hours of Mandatory Continuing Professional Education to

requiring each bar member to complete at least 12 credit hours of CLE over a two-year reporting period, with a minimum of 2 credit hours in ethics.

Commission members reviewed and discussed the Proposed Amendments to Rule 22. Members deferred voting on the Proposed Amendments to Rule 22 until other members, who were not present but previously had concerns regarding the mandatory CLE requirements, would have an opportunity to participate in the discussion.

The Commission met on November 30, 2012. Prior to convening the meeting, the members who were not present at the meeting of October 15, 2012, were able to meet and discuss the Proposed Amendments to Rule 22 with HSBA President Carol Muranaka. After the meeting commenced, the Commission continued its discussion on the Proposed Amendments to Rule 22. Several members expressed concerns as to whether the Proposed Amendments to Rule 22 had been reviewed by HSBA bar sections and other attorneys in the legal community. The Commission unanimously voted to refer the Proposed Amendments to Rule 22 to the Commission's CLE Committee to study and provide recommendations regarding the Proposed Amendments to Rule 22. The CLE Committee is to elicit comments regarding the Proposed Amendments to Rule 22 from members of the bar. The CLE Committee will then make recommendations to the Commission prior to the Commission's next meeting on April 26, 2013.

B. DVD Regarding the "Do's and Don'ts" in Appellate Court Briefs and Oral Arguments

Justice Duffy completed the "Do's and Don'ts" DVD, which was created based on an agreement with 'Ōlelo to produce a set of interviews with Hawai'i Supreme Court justices, Intermediate Court of Appeals judges, and selected practicing attorneys for their thoughts, experiences, and advice regarding appellate court briefs and oral arguments. Upon completion, the DVD was distributed to the members of the Commission and many others in the legal community, including the law school, and is available for members of

the public to view on the Hawai'i State Judiciary Website. The response from the community has been overwhelmingly positive.

VI. CONCLUSION

The Commission Chair is very grateful for the hard work of the Commission Members. The Commission, now in its seventh year, continues its efforts to enhance professionalism among Hawai'i lawyers, as noted in this report and the earlier annual reports.

Respectfully submitted this 17th day of December, 2012.

/s/ Richard W. Pollack
JUSTICE RICHARD W. POLLACK
Chair, Commission on Professionalism

Appendix

“A”

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Establishment of
HAWAII SUPREME COURT'S
COMMISSION ON PROFESSIONALISM

FILED
2005 MAR 14 PM 1:22
XIHAKAKAO
CLERK OF THE SUPREME COURT
STATE OF HAWAII

ORDER ESTABLISHING THE HAWAII SUPREME COURT'S
COMMISSION ON PROFESSIONALISM
(By: Moon, C.J., for the court¹)

WHEREAS, in August 1996, the Conference of Chief Justices (CCJ) passed a resolution calling for a national study and action plan regarding lawyer conduct and professionalism, wherein the CCJ noted a significant decline in professionalism in the bar and a consequent drop in the public's confidence in the profession and the justice system in general and concluded that a strong coordinated effort by state supreme courts to enhance their oversight of the profession was needed; and

WHEREAS, in March 1999, the CCJ's January 1999 *National Action Plan on Lawyer Conduct and Professionalism* was published and disseminated to chief justices, lawyer disciplinary agencies, and state bar associations throughout the United States; and

WHEREAS, the National Action Plan sets forth programs, initiatives, and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession; and

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

WHEREAS, on August 2, 2001, the CCJ adopted the strategies for implementing the National Action Plan formulated by the American Bar Association in its report, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*; and

WHEREAS, the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism (National Action Plan Committee), charged with the task of reviewing the National Action Plan and making recommendations to the supreme court, issued its final report on May 24, 2004.

NOW, THEREFORE, upon the recommendation of the National Action Plan Committee,

IT IS HEREBY ORDERED that:

(1) The Hawai'i Supreme Court's Commission on Professionalism is hereby established.

(2) The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

- (a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;
- (b) identify barriers to implementation;

(c) identify action steps to overcome barriers;
and

(d) propose a post-implementation evaluation
process.

(3) The Chair of the Commission shall be the Chief Justice or the Chief Justice's designee. Commission members shall be appointed by the chief justice, upon the concurrence of a majority of the justices of the supreme court. In addition to the Chair, the Commission shall be comprised of a total of nineteen (19) members that reflect racial, ethnic, gender, and geographic diversity and as prescribed below:

(a) Judges.

(i) Four (4) incumbent Hawai'i trial court judges chosen from the First, Second, Third, and/or Fifth Judicial Circuits;

(ii) Two (2) incumbent judges chosen from the Hawai'i Supreme Court or the Intermediate Court of Appeals or both;
and

(iii) One (1) incumbent judge chosen from the United States District Court for the District of Hawai'i or the United States Court of Appeals for the Ninth Circuit.

(b) Practicing Lawyers. Four (4) practicing lawyers who are members of the Hawai'i State Bar Association, chosen from a list of ten

(10) nominees recommended by the Board of Directors of the Hawai'i State Bar Association.

(c) Law School Faculty. One (1) law school faculty member who is a full-time faculty member from the University of Hawai'i Richardson School of Law, chosen from a list of three (3) nominees recommended by the dean of the law school.

(d) Attorney Regulatory Entities. One representative each from (i) the Disciplinary Board of the Hawai'i Supreme Court, (ii) the Lawyers' Fund for Client Protection, (iii) the Attorneys and Judges Assistance Program, and (iv) the Board of Bar Examiners, chosen from a list of three (3) nominees recommended by the board and/or trustees of each respective entity.

(e) Public Members. Three (3) non-lawyer citizens active in public affairs.

(4) With the exception of the Chair of the Commission, the members of the Commission shall serve for a term of four (4) years provided, however, in the discretion of the chief justice, the initial appointments may be for a term of less than four (4) years so as to accomplish staggered terms for the membership of

the Commission. A Commissioner may be appointed for additional terms.

(5) A Commissioner who no longer meets the qualifications of this rule shall be deemed to have completed the Commissioner's term and the Commissioner's office shall be deemed vacant. Any vacancy on the Commission shall be filled by the chief justice, upon the concurrence of a majority of the justices of the supreme court, for the unexpired term.

(6) The Commission shall serve in an advisory capacity only, shall give continuing consideration to the enhancement of professionalism in the practice of law, and shall make reports and/or recommendations to the supreme court, annually, regarding implementation of the National Action Plan and any other relevant information regarding the work of the Commission.

(7) Commission members shall not receive compensation for their services, but may be reimbursed for travel and other expenses that are incidental to the performance of their duties.

(8) The Commission shall have no authority to impose discipline upon any members of the Hawai'i State Bar or to amend, suspend, or modify the Hawai'i Rules of Professional Conduct (HRPC). The Commission, however, may, if appropriate, recommend amendments to the HRPC to the supreme court for consideration.

IT IS FURTHER ORDERED, pursuant to the foregoing, that the following individuals are appointed as members of the Commission on Professionalism, effective immediately upon the filing of this order and for the term as specified below:

For a term expiring on March 13, 2007.

Hon. Karen Radius, First Judicial Circuit
Hon. Terence Yoshioka, Third Judicial Circuit
Hon. Daniel Foley, Appellate Court
Hon. Susan Oki Mollway, Federal Court
Susan Arnett, HSBA
Terence O'Toole, HSBA
Carol Muranaka, Lawyers Fund for Client Protection
Steven Dixon, Attorneys & Judges Assistance Program
Wesley Park, Public member


For a term expiring on March 13, 2009


Hon. Joseph Cardoza, Second Judicial Circuit
Hon. Trudy Senda, Fifth Judicial Circuit
Hon. Steven Levinson, Appellate Court
Calvin Young, HSBA
Michael Nauyokas, HSBA
Carol Mon Lee, Richardson School of Law
Carole Richelieu, ODC
Grace Nihei Kido, Board of Bar Examiners
Petra Bray, Public member
Nathan Nikaido, Public member

IT IS FINALLY ORDERED that the HONORABLE JAMES E. DUFFY, JR., is appointed as the Chief Justice's designee and shall serve as Chair of the Commission:

DATED: Honolulu, Hawai'i, March 14, 2005.

FOR THE COURT:


Chief Justice



Appendix “B”

MEMBERS OF THE COMMISSION ON PROFESSIONALISM

SUSAN ARNETT, ESQ. is a graduate of Kalani High School (1969), the University of Hawai'i (1974) and the Catholic University of America Law School (1977). After working at the Legal Aid Society of Hawai'i and five years of private practice, she joined the State Public Defender's Office in 1985. As a senior trial attorney in that office, she has done approximately 75 felony jury trials, including murder and class "A" felonies. She served as supervisor of the Maui office from 1997 to 2001 and is now a Felony Trial Supervisor in the Honolulu office. She has supervised the planning and presentation of the annual week-long statewide Public Defender Advocacy Skills Training Program for the past 15 years. She also serves on the faculty of the Institute for Criminal Defense Advocacy program at California Western Law School. She is an adjunct professor at the University of Hawai'i William S. Richardson School of Law with the Hawai'i Innocence Project. She serves on the Hawai'i Supreme Court Committee on Judicial Performance. She has served as a volunteer with the Hawai'i Opera Theater since 2002.

JUDGE JOSEPH CARDOZA is a judge on the Second Judicial Circuit Court, State of Hawai'i, and is a current Vice President, Hawai'i State Trial Judge Association. He spent approximately a decade in private practice and a decade in government practice before becoming a judge. Judge Cardoza serves or has served as a continuing legal education instructor and as a volunteer with a variety of community organizations.

MALCOM H.M. CHANG, D.D.S. received his doctor of dental surgery degree from the University of Southern California in 1976 and his bachelor of science in biology degree from the University of Missouri-Kansas City in 1968. Dr. Chang started his own dental practice in 1977. He is currently serving or has served as a member, officer, or board of director of various businesses and organizations, and chaired many committees, including the American Dental Association, Hawai'i Dental Association, Hawai'i Dental Service, Honolulu County Dental Association, International Academy of Gnathology American Section, the 50th State Dental Study Club, Waialae Country Club; La Confrerie des Vignerons de Saint Vincent Macon; Bulldog Club of America; Hawaiian Bulldog Club; and Hawaiian Kennel Club. Dr. Chang was also an Eagle Scout in the Boy Scouts of America.

STEVEN B. DIXON, ESQ. is a 1975 graduate of the University of Hawai'i at Hilo, has practiced law in small to medium-sized law partnerships and as a solo practitioner on the Big Island since 1978. His areas of practice included real estate, business, tax, and estate planning. He has also served as Principal Broker for Kohala Ranch, and the oldest and largest vacation ownership developer in the world, Fairfield Resorts, Inc. In December 2005, he succeeded retiring Director Peter Donahoe as Director of the Hawai'i Supreme Court Attorneys and Judges Assistance Program. He serves as a volunteer on the Hawai'i Medical Association Physician's Health Committee. An avid sailor, and author of Hawai'i sailing stories "The Hawaiian Voyages of the Ono Jimmy,"

he has served as Commodore of the Kona Sailing Club and is a member of the Hawai'i Yacht club. He sailed to O'ahu and now lives on his CSY '44 cutter rigged sailing vessel in the Ala Wai Harbor.

ASSOCIATE JUDGE DANIEL R. FOLEY has been an Associate Judge on the Intermediate Court of Appeals, State of Hawai'i, since October 2000. He received his B.A. in 1969 and his J.D. in 1974 from the University of San Francisco. Prior to his appointment as a judge, he was a partner for eleven years in the law firm of Partington & Foley where he handled federal and state civil rights cases. He also was an Adjunct Professor of Civil Rights at the University of Hawai'i William S. Richardson School of Law. From 1984 to 1987 Judge Foley was legal director of the American Civil Liberties Union of Hawai'i and from 1975 to 1983 he was counsel to various Micronesian governmental bodies, constitutional conventions, and organizations.

DAVID W. HALL, ESQ. has been a solo practitioner since 1993 in areas including criminal defense, civil litigation, and juvenile law. He received a B.A. in political science from Yale University in 1961, served in the Naval Reserve on active duty from 1961-1966 and received his J.D. from the George Washington University's National Law Center in 1971. He served as a Hawai'i deputy public defender in 1971 and has been in private practice since 1971. He served on the Act 59 Task Force 2004-5 and has served as a CAAP Arbitrator since 1985 and on the Hawai'i Supreme Court's Standing Committee on the Rules of Evidence since 1990.

JANET S. HUNT, ESQ. is the Executive Director of the Office of Disciplinary Counsel (ODC). She has served as an Assistant Chief Trial Counsel and as a Supervising Trial Counsel in the Office of Chief Trial Counsel, Enforcement Division of the State Bar of California for twenty-one years prior to becoming the Executive Director with ODC. She practiced as a creditor's rights attorney in bankruptcy court and a general practitioner until she became staff attorney with the State Bar of California in 1987. She is the current administrator for the Lawyers' Fund for Client Protection. She is a member of the National Client Protection Organization. She has served on numerous panels of the National Organization of Bar Counsel and was a member of the Program Committee. She is a member of the American Bar Association.

GRACE NIHEI KIDO, ESQ. is a partner in the Finance and Real Estate Department of Cades Schutte, LLP. She is also Chairperson of the firm's Recruiting Committee and a member of the Summer Program Committee. Ms. Kido obtained her B.A. with distinction from the University of Hawai'i in 1977, and her law degree from the University of Hawai'i William S. Richardson School of Law in 1985, following a five-year career in Human Resource Management in the hotel industry. While at the University of Hawai'i earning her law degree, Ms. Kido was the casenote editor and member of the Law Review and was a finalist in the school's Moot Court competition. Ms. Kido has been a member of the Board of Bar Examiners of the Hawai'i Supreme Court since 1994; is the current Treasurer and has been on the Board of Directors of the Real Property and Financial Services Section of the Hawai'i State Bar Association since

2000; is a Fellow of the American College of Mortgage Attorneys; and is a former director of the University of Hawai'i William S. Richardson School of Law Alumni Association and of the Young Lawyer's Division of the Hawai'i State Bar.

JUDGE LESLIE E. KOBAYASHI was confirmed as a United States District Judge in the District of Hawai'i on December 22, 2010. She was appointed as a United States Magistrate Judge for the District of Hawai'i, first in 1999 and was reappointed in 2007. Before taking the bench, Judge Kobayashi served as a deputy prosecuting attorney for the City and County of Honolulu, and spent 17 years in private practice in the law firm of Fujiyama, Duffy, & Fujiyama where she was a trial attorney and a managing partner. She handled a variety of matters while in private practice, including personal injury, business disputes, labor and employment, medical and legal malpractice, and products liability. She received her B.A. from Wellesley College (1979) and her J.D. from Boston College School of Law (1983). Judge Kobayashi currently serves on the Ninth Circuit Alternative Dispute Resolution Committee. She has served on other committees, including the Ninth Circuit Conference Executive Planning Committee, Magistrate Judges' Executive Board for the Ninth Circuit, sub-committees for the Hawai'i Chapter for the American Judicature Society, and as a Bencher for the American Inns of Court, Aloha Inn. From 2000-2002, she was an Adjunct Professor at the University of Hawai'i William S. Richardson School of Law and the co-recipient of the Outstanding Adjunct Professor Award in 2002. She was also a recipient of the 2011 Outstanding Judicial Achievement Award from the Hawai'i Women Lawyers.

GAYLE J. LAU, ESQ. presently serves as Regulatory Officer with the Hawai'i Credit Union League. He previously served as Assistant United States Trustee with the U.S. Department of Justice, overseeing the administration of bankruptcy cases. Mr. Lau received his Bachelor's degree from the University of Southern California, his Master of Business Administration from the University of Hawai'i and his Juris Doctorate from the University of the Pacific, McGeorge School of Law. He has served as a trustee of the Lawyers Fund for Client Protection and a member of the committee to revise the Hawai'i Rules of Professional Conduct.

ASSOCIATE JUSTICE SABRINA S. MCKENNA received her B.A. in Japanese in 1978 from the University of Hawai'i at Manoa and her J.D. in 1982 from the University of Hawai'i William S. Richardson School of Law. Justice McKenna practiced at Goodsell Anderson Quinn & Stifel until 1987, then became in-house counsel to Otaka, Inc., a Japan-based international business organization, until 1990. From 1991 to 1993, she was an Assistant Professor at WSRSL. She became a state District Court judge in late 1993, then a First Circuit Court judge in 1995, where she presided over criminal, domestic, violence, and civil calendars, before serving as Senior Judge of the Family Court of the First Circuit. She was sworn in as an Associate Justice of the Hawai'i Supreme Court on March 3, 2011.

Justice McKenna is currently on the Board of the AJS-Hawai'i chapter and co-chairs its Committee on Judicial Administration. She is also on the Executive Board of the

Judicial History Center and is with the Courts-Media Working Group of the Hawai'i Federal and State Courts. She also previously served on various Supreme Court Committees, including Chair of the committees on Court Interpreters and Language Access, To Evaluate the Qualifications of Per Diem Judges in the First Circuit, Certification of Legal Specialists, and Probation Policy, and as a member of the Committees on Children in Family Courts, Civil Pattern Jury Instructions, and Equality and Access to the Courts. She also worked with the HSBA Committee on Professionalism to author portions of the original Professionalism Manual for the Professionalism Course that became mandatory in 2001.

JUDGE PAUL MURAKAMI has been a judge in the Family Court of the First Circuit since June, 2002. He served as a per diem judge from June, 1995 until June, 2002. He has served each of the divisions of the Family Court, both as a per diem and full-time judge. Judge Murakami graduated from the William S. Richardson School of Law in 1983, and received his B.A. in Economics from the University of Hawai'i in 1977. Prior to his appointment, he was in private practice, worked as a member of the Medical Claims Reconciliation Panel, and was a deputy public defender.

NATHAN NIKAIDO is a 1978 graduate of the University of Hawai'i (B.A., Economics) and received Masters in Urban and Regional Planning in 1983. From 1982-present, Mr. Nikaido has served as a volunteer mediator with The Mediation Center of the Pacific and had mediated approximately 1,600 cases at District Court. Since 1985, he has also served as the an Accountant with The Mediation Center of the Pacific. Mr. Nikaido was a recipient of the 2004 Liberty Bell award presented by the Hawai'i State Bar Association.

TERENCE O'TOOLE, ESQ. is an alumni of UC Berkeley, Boalt Hall School of Law and was admitted to the California Bar in 1971, the Hawai'i Bar in 1972 and the D.C. Bar in 1989. He is a director of the law firm Starn O'Toole Marcus & Fisher and has over twenty-five years of experience in the area of commercial and complex litigation, with an emphasis in construction claims and disputes representing owners, contractors and design professionals. Mr. O'Toole co-authored an article for the Hawai'i Bar Journal that has been republished in the "Giants" of the Trial Bar V: Cross-Examination of Expert Witness. He has also organized and spoken at various professional seminars and legal conferences in California, Hawai'i and Singapore on construction claims. Mr. O'Toole was named in "Best Lawyers in America."

WESLEY T. PARK served Hawai'i Dental Service as its former President and CEO from 1995-2001. Currently, he is president of Maunawili Consulting. Mr. Park holds a bachelor's and master's of education degree from the University of Hawai'i (UH), IMLE certificate from Harvard University, and an Honorary Doctor of Philosophy degree from Hong-ik University in Korea. He served as Captain in the U.S. Air Force and was on active duty from 1960-1965. He was Vice-President for Administration at the East-West Center, Dean Emeritus for the College of Continuing Education and Community Service at UH, and Director of the Small Business Management Program at UH. Mr. Park has

also served on the boards of many businesses and organizations including the Honolulu Academy of Arts, Coalition for a Drug-Free Hawai'i, First Hawaiian Bank, Korean Chamber of Commerce, Honolulu Symphony Society, Verizon Hawai'i, and Rehabilitation Hospital of the Pacific.

JUDITH ANN PAVEY, ESQ. has been in the private practice of law since 1978. Her practice is primarily concentrated on litigation, primarily plaintiff personal injury but with extensive criminal defense and some corporate litigation. A graduate of Purdue University (B.A.) and Indiana University (J.D.), Judy is a member of the American Board of Trial Advocates, American Inns of Court, and the Consumer Lawyers of Hawai'i.

ASSOCIATE JUSTICE RICHARD W. POLLACK was sworn in as an Associate Justice of the Hawai'i Supreme Court on August 6, 2012. Prior to his appointment, he served as a judge of the Circuit Court of the First Circuit from May 10, 2000. Justice Pollack was a deputy public defender for the State of Hawai'i from 1980 until his appointment as the State Public Defender on February 3, 1987. He served in that capacity until his appointment to the circuit court bench. Since 1990, Justice Pollack has been an adjunct professor at the University of Hawai'i, William S. Richardson School of Law. He currently teaches courses in the law of Evidence and Criminal Procedure. Justice Pollack received his undergraduate degree from the University of California at Santa Barbara and law degree from Hastings College of the Law.

JILL J. RAMSFIELD. Ms. Ramsfield is a Professor of Law and Director of the Legal Research and Writing at the William S. Richardson School of Law. Professor Ramsfield was previously a tenured faculty member at Georgetown University Law Center. Professor Ramsfield is a graduate of Wellesley College (B.A.) and the University of Wisconsin (B.S., J.D.). In addition to her law school teaching, Professor Ramsfield teaches continuing legal education courses nationally and internationally, helping lawyers to write better and faster. Her clients include law firms, government agencies, judges, and magistrates. She has developed a specialty working with individual attorneys to create techniques uniquely suited to their styles and law practices. Professor Ramsfield is the author of, among other publications, *Is Logic Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL ED. 157 (1997); *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (West 2000); *CULTURE TO CULTURE: A GUIDE TO U.S. LEGAL WRITING* (Carolina Academic Press 2005); and co-author with Mary Ray of *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (West 4th ed. 2005).

JUDGE TRUDY SENDA has been a judge of the District Court of the Fifth Circuit since May 2001. Prior to that, she was in private practice for 17 years in Honolulu and Kauai. She currently serves as the acting deputy chief judge for the Fifth Circuit regarding matters involving the District Court's jurisdiction over criminal, traffic and civil matters.

JUDGE BARBARA T. TAKASE has been a judge of the District Court of the Third Circuit since 2004. She served as a per diem judge of the District and Family Courts from 1999-2004. Judge Takase received her law degree from the William S.

Richardson School of Law and her Bachelor of Arts in Psychology and a Teaching Certificate from the University of Hawai'i – Hilo College. Prior to her appointment, she was in private practice, worked as a hearings officer for the Department of Education "Felix" cases, a deputy prosecuting attorney for the Hawai'i County Office of the Prosecuting Attorney, and a social worker at various agencies.

KEVIN K. TAKATA, ESQ. graduated from Case Western University School of Law. He was an associate with Oliver, Cuskaden & Lee from 1984 to 1987, general civil practice; Honolulu Deputy Prosecuting Attorney from 1987 to 2012; member of the Homicide Team from 1990 to 1996; Trials Division chief from 1997-2006; Kauai County First Deputy Prosecuting Attorney November 2012 to present. He lectures in various areas of criminal prosecution to other prosecutors, police and law enforcement groups. He is an instructor at the National Advocacy Center, a national training center for prosecutors and district attorneys.

CALVIN E. YOUNG, ESQ., a partner with Ayabe Chong Nishimoto Sia & Nakamura, is a 1982 graduate of the William S. Richardson School of Law. His practice concentrates on cases involving professional liability, aviation and product liability. Mr. Young was a member of the Disciplinary Board of the Hawai'i Supreme Court from 1995 to 2001, the Chair of the HSBA Committee on Professional Responsibility from 2002 to 2011, and is currently the Chair of the HSBA Committee on Mentoring as well as Vice-President of the HSBA Board.

Appendix “C”

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of October 15, 2012

2:30 p.m. – 4:00 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
Members: Judge Joseph Cardoza (via telephone), Dr. Malcom Chang, Associate Judge Daniel Foley, Janet Hunt, Gayle Lau, Associate Justice Sabrina S. McKenna, Judith Pavey, Kevin Takata, Terence O'Toole, Calvin Young
Guests: Levi Ho'okano, Carol Muranaka, Patricia Mau-Shimizu, Mark Schlov, E. Gunner Schull, Julie Yang

HANDOUTS:

- (1) Agenda
- (2) Letter from HSBA President Carol Muranaka to Associate Justice Pollack Re: Proposed Amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i (dated September 13, 2012)
- (3) Special Report of HSBA Continuing Legal Education Committee (the "Committee" Regarding an Amendment to Rule 22 of the Hawai'i Supreme Court
- (4) Letter from Chair of the MCLE Board Judith Pavey to the Hawai'i Supreme Court regarding the administration of Rule 22 (dated March 21, 2012)
- (5) Schedule outlining MCLE requirements State by State
- (6) Proposed Amendments and Restatement of Rule 22
- (7) Memo from HSBA President Carol Muranaka to HSBA Executive Committee (dated August 9, 2012)
- (8) Proposed Amendments Rule 22 of the Rules of the Supreme Court of the State of Hawai'i in Ramseyer Format

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the commission for attending the meeting. He also thanked Carol Muranaka, E. Gunner Schull, and Mark Schlov for being present to make a presentation to the commission regarding proposed amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i (Rule 22).

Justice Pollack noted that at the time of the last meeting on April 11, 2011, Associate Justice James E. Duffy, Jr. was working on the "Do's and Don'ts" DVD Project. The DVD was subsequently completed and distributed to the members of the commission and many others in the legal community, including the law school, and is available for members of the public to view on the Hawai'i State Judiciary Website. The response to the "Do's and Don'ts" DVD has been overwhelmingly positive.

II. PRESENTATION BY HSBA CLE COMMITTEE CO-CHAIRS ON PROPOSED AMENDMENTS TO RULE 22 OF THE RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

E. Gunner Schull, co-chair of the HSBA Committee on Continuing Legal Education (CLE), provided a brief history about how the proposed amendments to Rule 22 came to fruition. Mr. Schull explained that a March 2012 letter by Judith Pavey, chair of HSBA's Mandatory Continuing Legal Education (MCLE) Board, to the Hawai'i Supreme Court which expressed the difficulty in distinguishing between voluntary and mandatory CLE under Rule 22 of the Rules of the Supreme Court of the State of Hawai'i was the catalyst for initiating the process.

HSBA charged its CLE Committee to examine and, if appropriate, draft proposed amendments to Rule 22. The CLE Committee held several meetings to discuss increasing the number of hours over a specific reporting period. In the end, the committee voted to propose amending Rule 22 from requiring each bar member to annually complete at least 3 credit hours of Mandatory Continuing Professional Education to requiring each bar member to complete at least 12 credit hours of CLE over a two-year reporting period, with a minimum of 2 credit hours in ethics.

Mark Schlov, co-chair of the HSBA Committee on CLE, noted that the HSBA CLE Committee was unanimous in support of the proposed amendments to Rule 22.

Carol Muranaka added that HSBA sent the proposed amendments to the Commission on Professionalism because that was the same procedure HSBA had followed when it had first proposed amendments to the Rules of the Supreme Court of the State of Hawai'i requiring mandatory CLE courses for members of the bar.

III. DISCUSSION OF THE PROPOSED AMENDMENTS TO RULE 22 OF THE RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

Discussion by the commission members started with the history of the changes to CLE requirements in Hawai'i. One member described how there was a survey conducted after the Commission on Professionalism was formed in 2005 of large, medium, and small firms as well as solo practitioners, neighbor island attorneys, and government agencies. The responses showed that the large firms encouraged and paid for their attorneys to attend CLE courses in the state and on the mainland. Government lawyers were commonly required to attend mandatory CLE courses, even shutting their entire offices two or three days a year to hold courses. In addition, judges were required to annually attend several judicial education training programs. Some solo, neighbor island, and other attorneys cited problems of expense and lack of time as objections to mandatory CLE courses. All of this information was considered during the process of formulating the current provisions of Rule 22.

A member questioned whether creating a cap on the maximum HSBA can charge a member for a CLE course would affect the ability to attract top presenters to teach CLE

courses. Patricia Mau-Shimizu, HSBA Executive Director, indicated that the cap on what HSBA can charge its members for CLE courses was designed to allow solo and neighbor island attorneys to have access to reasonably priced courses. However, the proposed amendments only limit the cost of what HSBA may charge for its CLE courses. CLE courses hosted by private organizations and those on the mainland are not covered by Rule 22, which allow top presenters to be compensated at a level set by the organization.

Next, members discussed the proposed provision that "HSBA shall liberally and reasonably construe this rule." Mr. Schull explained the CLE committee's intent was to ensure that HSBA would be given adequate flexibility in fulfilling its responsibilities under the rule.

The discussion then turned to the topic of the CLE requirement for a two-year reporting period. Ms. Muranaka noted that the proposal to allow CLE credits to be earned in a two-year versus three-year reporting period was to ensure that attorneys are keeping current in CLE courses. A member noted that HSBA already tracks carryover of credits over a two-year period.

A member asked how many members of the bar were in noncompliance with the current CLE requirements under Rule 22. Julie Yang, HSBA MCLE Administrator, responded that in the 2010 compliance year, eight attorneys were in noncompliance. However, all eight paid a fee and sent in their CLE certificates or completed the requirements to fulfill compliance requirements. As a result, no attorneys were suspended for noncompliance of the CLE requirements.

A member noted the minimum hours of continuing education courses that other professions require are much higher than the twelve credits hours over the two year period being proposed in Rule 22.

With discussion completed, Justice Pollack noted that the commission had a minimum quorum, and the commission discussed whether it was ready to vote on adopting the proposed amendments to Rule 22. Members proposed waiting to vote on the proposed amendments until other members, who were not present but previously had concerns regarding the mandatory CLE requirements, be given an additional opportunity to participate in the discussion. Deferring the vote until the next meeting was agreed upon by the members of the commission.

IV. NEXT MEETING

The next meeting was scheduled for November 30, 2012 at 2:30 p.m. In light of the fact that non-attending members were not able to hear the presentation by HSBA, it was resolved that those members who were not present may attend a preliminary meeting at 2:00 p.m. in which an HSBE CLE committee representative would be present to discuss the proposed amendments to Rule 22.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

October 15, 2012

2:30 p.m.

Ali'iolani Hale

Supreme Court Conference Room

AGENDA

- I. Welcome and Announcements
- II. Presentation by CLE Committee Co-Chairs on Proposed Amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i
- III. Discussion of the Proposed Amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i
- IV. New Business
- V. Next Meeting
- VI. Adjournment



September 13, 2012

The Honorable Richard W. Pollack
Associate Justice
Hawaii State Supreme Court
Commission on Professionalism
417 South King Street
Aliiolani Hale
Honolulu, Hawaii 96813

RE: **Proposed Amendments to Rule 22 of the Rules
of the Supreme Court of the State of Hawaii**

Dear Justice Pollack:

The HSBA Committee on Continuing Legal Education ("CLE Committee") recommended various changes to the Supreme Court Rule 22. These changes included:

- (a) Every active bar member must complete at least 12 credit hours of approved continuing legal education ("CLE") courses or activities during each two-year reporting period;
- (b) Of the 12 credit hours, each active member must complete a minimum of two credit hours in ethics, which is defined as a course or activity covering the accepted principles of professional conduct and responsibility as established by the Hawaii Rules of Professional Conduct;
- (c) One credit hour shall mean a minimum of fifty minutes of instruction;
- (d) One of the methods to meet the CLE requirement is to write articles for the *Hawaii Bar Journal*, law review, or writing books in a scholarly or practical manner with two credit hours allowed for each 1,500 words published;
- (e) CLE courses and activities sponsored by an ABA-approved law school or the Hawaii Access to Justice Commission qualify for credit under this rule;
- (f) The HSBA shall liberally and reasonably construe the rule and endeavor to charge only fees necessary to recover the costs of course materials, neighbor island travel for speakers, refreshments, room rental charges, and the like.

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Justice Richard W. Pollack
Page 2
September 13, 2012

In a special report prepared by E. Gunner Schull, Co-Chair of the CLE Committee, the recommendation is stated as follows:

As noted in the Muranaka memo the Committee recommends the amendment of Rule 22 to require two hours devoted specifically to ethics and ten hours of substantive law courses over a reporting period of two years rather than the three hours of "professionalism" each year currently required by Rule 22. This amounts to a modest increase of mandatory CLE of three hours per year giving bar members the flexibility to meeting the requirements over a two-year period. The proposal is responsive to the issues raised in the Pavey letter, and brings Hawaii a little closer to the mainstream of continuing education requirements adopted by 90% of the bar organizations in the United States.

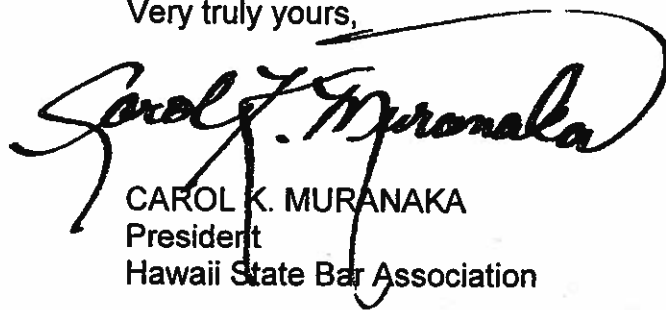
The HSBA Board discussed the CLE Committee's recommendation at its meeting on Thursday, August 23, 2012. The Board decided that all the materials received from the CLE Committee should be transmitted to the Supreme Court's Commission on Professionalism for the Commission's consideration.

Accordingly, we have enclosed the following documents:

Special Report of HSBA Continuing Legal Education Committee (the "Committee") Regarding an Amendment to Rule 22 of the Hawaii Supreme Court dated August 17, 2012, including attachments (1) Letter dated March 21, 2012 from Judith Ann Pavey (Chair of MCLE Board) to the Hawaii Supreme Court regarding the administration of Rule 22; (2) schedule outlining MCLE requirements state by state; (3) Proposed Amendment and Restatement of Rule 22; and (4) Memo dated August 9, 2012 from Carol K. Muranaka to the HSBA Executive Committee.

If you have any questions, please let us know. Thank you for your consideration of this matter.

Very truly yours,



CAROL K. MURANAKA
President
Hawaii State Bar Association

Enclosures

Special Report of HSBA
Continuing Legal Education Committee (the “Committee”) Regarding an
Amendment to Rule 22 of the Hawaii Supreme Court

This report is made at the President’s request regarding the considerations by the Committee concerning the status of Rule 22 of the Hawaii Supreme Court and the requirements of mandatory continuing legal education (“MCLE”) for members of the Hawaii bar.

Attached to this Report are copies of:

- (1) Letter dated March 21, 2012 from Judith Ann Pavey (Chair of MCLE Board) to the Hawaii Supreme Court regarding the administration of Rule 22;
- (2) Schedule outlining MCLE requirements State by State;
- (3) Proposed Amendment and Restatement of Rule 22; and
- (4) Memo dated August 9, 2012 from Carol K. Muranaka to the HSBA Executive Committee.

The Committee’s review of Rule 22 was prompted, among other things, by the Pavey letter and the results of a review of MCLE requirements in other states which disclosed that 45 states have adopted MCLE requiring (with the exception of Alaska) at least 10 hours per year. The process followed by the Committee is described in the Muranaka memo.

The debate at the Committee meetings considered the various arguments against the MCLE concept in general, including the fact that there is no conclusive proof that MCLE is effective and the expectation that additional MCLE requirements will be opposed by the bar membership.

It was conceded that we have not found a definitive study proving the efficacy of MCLE, but the Hawaii Supreme Court and the governing entities of 45 states have concluded that continuing legal education contributes to lawyer competence and benefits the legal profession by assuring that attorneys remain current regarding the law and the obligations of the profession.

Faced with the reality of this conclusion and the HSBA’s significant interest that the Legislature and the Hawaii Supreme Court continue to allow the HSBA to self-regulate, it was the Committee’s view that the perceived public benefit in promoting lawyer competence should be given careful consideration despite bar member reluctance.

Rule 22 currently requires each bar member to complete annually at least 3 credit hours of Mandatory Continuing Professional Education (MCPE) and encourages 9 or more hours of Voluntary Continuing Legal Education (VCLE). After two years of experience with Rule 22, the Pavey letter explains the difficulties faced by the Mandatory Continuing Legal Education Board in defining the scope of qualifying MCPE topics and suggests the designation of certain hours limited to ethics with the balance to consist of substantive law courses. As to VCLE, less than 40% of the members reported any VCLE credit hours during the two-year period.

Recommendation

As noted in the Muranaka memo the Committee recommends the amendment of Rule 22 to require two hours devoted specifically to ethics and ten hours of substantive law courses over a reporting period of two years rather than the three hours of “professionalism” each year currently required by Rule 22. This amounts to a modest increase of mandatory CLE of three hours per year giving bar members the flexibility of meeting the requirements over a two-year period. The proposal is responsive to the issues raised in the Pavey letter, and brings Hawaii a little closer to the mainstream of continuing educational requirements adopted by 90% of the bar organizations in the United States.

Respectfully submitted

E. Gunner Schull
Co-Chair
HSBA Continuing Legal Education Committee

August 17, 2012



March 21, 2012

The Honorable Mark Recktenwald
Chief Justice of the Hawaii Supreme Court and Members of the Court
417 S. King Street
Honolulu, HI 96813

Dear Chief Justice and Justices:

Rule 22 of the Rules of the Supreme Court attempts to distinguish between 2 types of CLE, Mandatory Continuing Professional Education (MCPE) and Voluntary Continuing Legal Education (VCLE). Three (3) hours of MCPE per year are required, and nine (9) hours of VCLE are encouraged. The categories listed under Rule 22(a) define MCPE topics as "including" the following:

- Hawaii Rules of Professional Conduct
- Legal ethics and related topics
- Law office management
- Client trust account administration
- Bias awareness and prevention
- Access to justice
- Case and client management
- Malpractice insurance and prevention

These categories are so broad that it has been an impossible challenge for the Board to distinguish in a consistent way VCLE from MCPE. Any substantive law course is directly related to malpractice prevention and case management. Arguably next to honesty, competency is the most important characteristic to the prevention of malpractice and knowing the substantive law is the foundation of competency.

- What are the "related topics" to legal ethics?
- Wouldn't that include substantive legal education?
- What falls within "access to justice" in the context of this Rule?
- Does any legal education that might assist a lawyer in providing competent pro bono legal services fall within that category? Clearly that would encompass most substantive law areas.
- And what about, for example, education related to the laws governing public access to public records? Wouldn't that fall within "access to justice"?

As a Board, we assumed you wanted us to distinguish between MCPE and VCLE so we voted to limit MCPE credit to substantive law courses (or parts thereof) that were clearly focused on ethics AND/OR to those where the purpose was to assist in providing pro bono legal services, but there have been constant and often, in my opinion, legitimate challenges to that interpretation and our decisions with respect thereto. We (both the administrators and the Board itself) have



spent an inordinate amount of time dealing with this issue, trying to determine the number of minutes in any program that qualify for MCPE credit as opposed to VCLE credit. It is not an insignificant distinction because penalties can be assessed against an attorney (up to suspension!) if he/she can't prove they qualified for the appropriate amount of MCPE credit.

My recollection is that the list of categories set forth in Rule 22(a) was compiled at least in part based upon the types of complaints the Office of Disciplinary Counsel was receiving, so does it follow that it was not your intention to so severely restrict MCPE credit? Would it make more sense to allow substantive law courses to fully qualify for MCPE credit and, if the Court feels it is necessary or prudent, to require a separate ethics review every so many years after admission that would also qualify for MCPE credit? Another idea is to eliminate the distinction between MCPE and VCLE which would elevate the importance of lawyer competency in protecting the public and then addressing ethics separately. A final suggestion is to require X number of CLE of which X number are on ethics.

We do feel that the administration of Rule 22(a) has necessarily been inefficient (and therefore costly) and troublesome as a result of the very broad, vague categories set forth therein. At the very least we are requesting clear definitions of exactly what the Court was contemplating in designating those particular topics and guidelines for their application to particular courses.

ADDITIONAL ISSUES/SUGGESTIONS

As the new Rule 22 has been applied, additional administrative issues have arisen that the Administrator suggests warrant changes to the Rules as follows:

1. Amend Rule 17(d)(4)(ii) to provide specific authority to suspend members who fail to comply with the MCPE audit process;
2. Amend Rule 17(d)(4)(i) to state that a member administratively suspended due to nonpayment of fees has 15 days after notice of the suspension was mailed within which to pay the reinstatement fee and all required fees and dues to avoid being required to take an additional 3 hours of MCPE pursuant to Rule 22(i);
3. Amend Rule 22(a) to allow MCPE credits taken while inactive to apply if taken in the reporting year or the prior year;
4. Amend Rule 22(c) to state that subsection (c) may be used to satisfy (a) and (i) subject to the 3 month reporting requirement in subsection (i); and
5. Amend Rule 22(i) to clarify that the change from any other status to active will trigger the "3 within 3" requirement of subsection (i) and that (c) can be applied.

These are not the only issues that have arisen which could justify changes in the Rules and/or Regulations. Some can be addressed by making more clear the extent of authority given by the Court to the MCLE Board and/or the Administrator.



Thank you for your consideration. If more specific information about lawyer/provider challenges to our decisions re: applying Rule 22 would be helpful, please let us know and we will be happy to provide more detail.

Sincerely,

A handwritten signature in black ink, which reads "Judith Ann Pavey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Judith Ann Pavey, Esq.
Chair, Mandatory Continuing Legal Education Board

MANDATORY CONTINUING LEGAL EDUCATION

State	Requirement
Alabama	12 hours/1 hour ethics
Alaska	3 hours ethics
Arizona	15 hours/3 hours ethics
Arkansas	12 hours/1 hour ethics
California	25 hours – 3 years; 4 hours ethics/1 hour substance abuse/ 1 hour bias
Colorado	45 hours – 3 years/ 7 hours ethics
* Connecticut	None
Delaware	24 hours – 2 years
District of Columbia	None
Florida	30 hours – 3 years
Georgia	12 hours
Hawaii	3 hours ethics
Idaho	30 hours – 2 years/2 hours professional responsibility
Illinois	24 hours – 2 years/4 hours ethics
Indiana	36 hours – 3 years/3 hours ethics
Iowa	15 hours – 1 year/2 hours ethics
Kansas	12 hours – 1 year/2 hours ethics
Kentucky	12.5 hours/2 hours ethics
Louisiana	12.5 hours/1 hour ethics/1 hour professionalism
Maine	11 hours/1 hour ethics
Maryland	None
Massachusetts	None
Michigan	None
Minnesota	45 hours – 3 years/2 hours bias/ 3 hours ethics
Mississippi	12 hours/1 hour ethics
Missouri	15 hours/3 hours ethics
Montana	15 hours/3 hours ethics

* Connecticut Bar Association House of Delegates endorsed an MCLE proposal for 36 hours over three years. Implementation delayed pending review of administrative costs.

	State	Requirement
	Nebraska	10 hours/3 hours ethics
	Nevada	12 hours/2 hours ethics
	New Hampshire	12 hours/2 hours ethics
	New Jersey	24 hours – 2 years/4 hours ethics/2 hours professional responsibility
	New Mexico	12 hours/1 hour ethics
	New York	24 hours – 2 years/ 4 hours ethics
	North Carolina	12 hours/2 hours ethics
	North Dakota	45 hours – 3 years/3 hours ethics
	Ohio	24 hours/3 hours ethics
	Oklahoma	12 hours/1 hour ethics
	Oregon	45 hours/9 hours ethics
	Pennsylvania	12 hours
	Rhode Island	10 hours/2 hours ethics
	South Carolina	14 hours/2 hours ethics
	South Dakota	None
	Tennessee	15 hours/3 hours ethics
	Texas	15 hours/3 hours ethics
	Utah	27 hours – 2 years/3 hours ethics
	Vermont	20 hours – 2 years/2 hours ethics
	Virginia	12 hours/2 hours ethics
	Washington	45 hours – 3 years/6 hours ethics
	West Virginia	24 hours – 2 years/3 hours ethics
	Wisconsin	30 hours – 2 years/3 hours ethics
	Wyoming	15 hours/1 hour ethics

**Proposed Amendment and Restatement of Rule 22 of the
Rules of The Supreme Court of Hawaii**

Rule 22. MANDATORY CONTINUING LEGAL EDUCATION

(a) **Mandatory Continuing Legal Education.** Except as otherwise provided herein, every active member of the Bar shall complete at least twelve credit hours of approved continuing legal education ("CLE") courses or activities during each two-year reporting period.

(b) **Ethics Minimum.** Of the twelve credit hours, each active member must complete a minimum of two credit hours in ethics. Ethics means a course or activity covering the accepted principles of professional conduct and responsibility as established by the Hawaii Rules of Professional Conduct.

(c) **Mandatory Certification, Reporting, and Recordkeeping.** Each active member shall certify the number of hours of approved CLE courses or activities completed during the requisite reporting period and shall maintain records of approved continuing legal education activities for the two most recent reporting periods. These records shall be subject to audit by the Hawaii State Bar Association ("HSBA"). Any active member who fails to cooperate with the HSBA when audited shall be deemed to be in noncompliance with this rule.

(d) **Courses and Activities.** The requirements of this rule may be met, subject to prior approval as set out in sections (e) and (f) of this rule, where one credit hour shall mean a minimum of fifty minutes of instruction by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, governmental entities, and the like;

(2) preparing for and teaching approved professional education or judicial education courses or activities. Two hours of preparation time may be certified or reported for each fifty minutes of presentation, i.e. three credit hours may be claimed for teaching a fifty minute course;

(3) studying approved audio, video, or other technology-delivered professional education courses or activities; or

(4) writing articles for the *Hawaii Bar Journal* or a law review, or writing books and similar publications treating legal or law-related topics in a scholarly or practical manner and directed primarily to an audience of lawyers, judges, and legal assistants with two hours of credit allowed for each 1,500 words published;

(e) **Approved Courses or Activities.** CLE courses and activities sponsored by an accredited provider, the HSBA, the American Bar Association ("ABA"), ABA-Approved law schools or the Hawaii Access to Justice Commission, qualify for credit under this rule.

(f) **Approval and Accreditation Authorization.** The HSBA is authorized to approve or disapprove:

(1) other educational courses and activities for CLE credit and

(2) applications by an entity for accreditation as a course or activity provider. Approved courses and activities may include, but are not limited to, courses and activities conducted in-house or sponsored by Inns of Court, bar sections, governmental entities, or other professional legal organizations. Accreditation of a provider shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA.

(g) **Regulations.** The HSBA may make and adopt such regulations, not inconsistent with this rule, governing the implementation of this rule and the performance of its duties hereunder, as it finds to be appropriate. The HSBA shall liberally and reasonably construe this rule. The HSBA shall endeavor to charge only fees necessary to recover the costs of course materials, neighbor island travel for speakers, refreshments, room rental charges and the like.

(h) **Full-time Judges.** Federal judges, magistrate judges, bankruptcy judges, U.S. Court of Federal Claims judges, and administrative law judges are exempt from the requirements of this rule. Full-time state judges shall participate for at least three hours each year in a program of judicial education approved by the Committee on Judicial Education. Full-time state judges who are unable to attend, in person, a program approved by the Committee on Judicial Education or who are excused from that program shall comply with this requirement by such other means as the supreme court approves. Full-time state judges shall report the number of approved judicial education hours attended on the judges annual financial disclosure form.

(i) **Inactive members.** Inactive members of the Bar who subsequently elect active status shall complete and report six hours of CLE credits within six months of electing active status.

(j) **Newly licensed members.** Each person licensed to practice law who elects active status in the year in which he or she is licensed shall be required to comply with the requirements of Rule 1.14 of these rules and the credits earned from the Supreme Court Mandated Professionalism Course under Rule 1.14 shall count towards the requirements of section (a) of this rule.

(k) **Good Cause Exemption or Modification.** An active member may apply to the HSBA for good cause exemption or modification from the continuing legal education requirement. Members seeking an exemption or modification shall furnish substantiation to support their application as requested by the HSBA. Good cause shall exist when a member is unable to comply with the continuing legal education requirement because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that are not willful and are beyond the member's control.

(l) **Effective Date; Reporting Period.** This rule shall be effective on January 1, 2013. The initial reporting period will be the two calendar years beginning January 1, 2013, and ending on December 31, 2014, and the following reporting periods will be every two years thereafter.

Date: August 9, 2012
To: 2012 HSBA Executive Committee
From: Carol K. Muranaka, HSBA President
Re: **Proposed amendments to Supreme Court Rule 22**

The 2012 HSBA Committee on Continuing Legal Education ("CLE Committee") with co-chairs, Gunner Schull and Mark Shklov, and members, Lissa Andrews, Clare Connors, Vlad Devens, Associate Justice James Duffy, Damien Elefante, David C. Farmer, Judge Glenn Hara, Janet Hunt, Dana Lyons, Cheryl Kakazu Park, Elmira Tsang, and Emily Waters, was tasked with developing seminars for the HSBA members and in examining Supreme Court Rule 22 for proposed amendments.¹

Background

On July 15, 2009, the Hawaii Supreme Court filed an "Order Amending Rule 17, and Adopting New Rule 22 of the Rules of the Supreme Court of the State of Hawaii," which put in place the mandatory continuing professional education ("MCPE") and voluntary continuing legal education ("VCLE") requirements. Under Rule 22, effective January 1, 2010, with the initial reporting period being the calendar year beginning January 1, 2010, every active member is required to complete at least three credit hours per year of approved MCPE and encouraged to complete nine or more credit hours per year of approved VCLE.

The Sixth Report to the Supreme Court dated June 7, 2011 from the Hawaii Supreme Court Commission on Professionalism stated that the Commission's recommendation for the MCPE requirement "was largely based on the 'Alaska' rule."²

¹ The HSBA Board Policy Manual provides the following description for the CLE Committee:

CONTINUING LEGAL EDUCATION - Develops programming to deliver quality continuing legal education to the legal community and proposes policies regarding the general subject of lawyer competence, including voluntary/mandatory continuing legal education and specialization/certification.

This description had been in place prior to the enactment of Supreme Court Rule 22.

² A copy of the Rules 65 and 66 of the Alaska Supreme Court is attached hereto.

Discussion

Supreme Court Rule 22 describes eight topics that qualify for MCPE credit hours. The rule provides as follows:

Qualifying professional education topics include the Hawaii Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

On March 21, 2012, the Mandatory Continuing Legal Education Board wrote to the Supreme Court about its concerns, stating that the above "categories are so broad that it has been an impossible challenge for the Board to distinguish in a consistent way VCLE from MCPE. The Board statement continued:

Any substantive law course is directly related to malpractice prevention and case management. Arguably next to honesty, competency is the most important characteristic to the prevention of malpractice and knowing the substantive law is the foundation of competency.

- What are the "related topics" to legal ethics?
- Wouldn't that include substantive legal education?
- What falls within "access to justice" in the context of this Rule?
- Does any legal education that might assist a lawyer in providing competent pro bono legal services fall within that category? Clearly that would encompass most substantive law areas.
- And what about, for example, education related to the laws governing public access to public records? Wouldn't that fall within "access to justice"?³

³ By letter dated March 29, 2011, the CLE Board (aka MCLE Board) responded to the letter sent to the CLE Board on November 22, 2010 by the Hawaii Access to Justice Commission to revise the definition of "access to justice." The CLE Board approved the following definition:

To qualify for MCPE credit, "access to justice" course topics should educate attorneys about equal access to justice, including barriers arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation, and should cover equal justice issues as they relate to the delivery of legal services to the low-income individuals in need. Additionally, substantive courses taught by non-profit legal service providers that require attorneys attending their course to commit to pro bono service also qualify for MCPE credit.

Using the March 21, 2012 letter from the MCLE Board, the CLE Committee embarked on an examination of the rule. Initially, Mr. Schull met with Janet Hunt, Chief Disciplinary Counsel, and Justice James Duffy (ret.) to discuss a framework for a revised rule. At subsequent meetings with members of the Committee, there were discussions on increasing the number of hours over a specific reporting period. It was noted that all but about five states require mandatory CLE.

The latest state to adopt MCLE requirements is New Jersey Supreme Court, which appointed the 11-member board that administers the program that provided a backdrop to the initial proposal.

In making its recommendation, the Committee made the following observations:

- Lawyers do not want to be told what to do; however, 12 credit hours of CLE over a two-year reporting period is not substantial.
- Most of the states require 24 credit hours of CLE over a two-year reporting period, and those that require 12 credit hours are mandating it annually.
- Increasing the number of credit hours should not concurrently increase the costs to the practicing lawyer.
- Seminars sponsored by the HSBA must be offered at cost and should not become a profit center.
- The mandate should not be burdensome for the government attorneys or sole practitioners.
- Many lawyers are already taking more than 12 credit hours of CLE annually.
- Lawyers can network at seminars, which can give lawyers the opportunity to consider unfamiliar areas of the law.
- We must demonstrate that these requirements are designed to protect the public rather than protecting the attorneys' union.
- Continuing legal education is valuable to maintain an attorney's skills and competence.

The Committee agreed that it was necessary to eliminate the distinction of MCPE and VCLE, and the majority agreed that it was appropriate to consider increasing the number of CLE credit hours over a two- or three-year reporting period. Finally, it was agreed that proposed amendment to Rule 22 would include: 12 CLE credit hours over a two-year period, and out of the 12 credit hours, an active member must complete a minimum of two credit hours of ethics. (Ethics means a course or activity covering the accepted principles of professional conduct and responsibility as established by the Hawaii Rules of Professional Conduct.)

PROPOSED AMENDMENTS

Rules of The Supreme Court of the State of Hawai'i

Rule 22. MANDATORY ~~[CONTINUING PROFESSIONAL EDUCATION AND VOLUNTARY]~~

CONTINUING LEGAL EDUCATION

(a) **Mandatory Continuing ~~[Professional]~~ Legal Education.** Except as otherwise provided herein, every active member of the Bar shall complete at least ~~[3 credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying professional education topics include the Hawai'i Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.]~~ twelve credit hours of approved continuing legal education ("CLE") courses or activities during each two-year reporting period.

(b) ~~[Voluntary Continuing Legal Education. In addition to MCPE, all active members of the Bar are encouraged to complete 9 or more credit hours per year of approved Voluntary Continuing Legal Education (VCLE).]~~ **Ethics Minimum.** Of the twelve credit hours, each active member must complete a minimum of two credit hours in ethics. Ethics means a course or activity covering the accepted principles of professional conduct and responsibility as established by the Hawaii Rules of Professional Conduct.

~~[(c) — Carry Forward of Credit Hours. A member may carry forward from the previous reporting period a maximum of 3 excess MCPE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.]~~

~~[(d)]~~ (c) **Mandatory Certification, Reporting, and ~~[Record Keeping]~~ Recordkeeping.** Each active Bar member shall ~~[annually: (1)]~~ certify the number of hours of approved [MCPE hours completed during the preceding year or carried forward, and (2) report the number of approved VCLE hours completed during the preceding year, specifying the number of such hours, if any, satisfied by section (e)(4) of this rule.] CLE courses or activities completed during the requisite reporting period and [A member] shall maintain records of approved ~~[MCPE credit hours and of approved VCLE credit hours]~~ continuing legal education activities for the ~~[2]~~ two most recent reporting periods. ~~[, and these]~~ These records shall be subject to audit by the ~~[HSBA]~~ Hawaii State Bar Association ("HSBA"). Any active ~~[Bar]~~ member who fails to cooperate with the HSBA when audited shall be deemed to be in noncompliance with this rule.

~~[(e)]~~ **(d) Courses and Activities.** The requirements of this rule may be met, subject to prior approval as set out in sections ~~[(f)e]~~ and ~~[(g)f]~~ of this rule, where one credit hour shall mean a minimum of fifty minutes of instruction by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, government entities, and the like;

(2) preparing for and teaching approved professional education or judicial education courses or activities. Two hours of preparation time may be certified or reported for each ~~[hour of time spent teaching]~~ fifty minutes of presentation, i.e. three credit [3] hours may be claimed for teaching a ~~[1 hour]~~ fifty minute course;

(3) studying approved audio, video, or other technology-delivered professional education courses or activities; ~~[and]~~ or

(4) ~~[with regard to the VCLE standard of this rule, up to 3 hours of that standard may be satisfied by providing pro bono service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct.]~~ writing articles for the *Hawaii Bar Journal* or a law review, or writing books and similar publications treating legal or law-related topics in a scholarly or practical manner and directed primarily to an audience of lawyers, judges, and legal assistants with two hours of credit allowed for each 1,500 words published;

~~[(f)]~~ **(e) Approved Courses or Activities.** ~~[Courses]~~ CLE courses and activities sponsored by an accredited provider, the [Hawai'i State Bar Association (HSBA)] HSBA, [or] the American Bar Association ("ABA"), ABA-Approved law schools or the Hawaii Access to Justice Commission, [and classified by the HSBA as MCPE or VCLE,] qualify for credit under this rule.

~~[(g)]~~ **(f) Approval and Accreditation Authorization.** The HSBA is authorized to approve or disapprove:

(1) other educational courses and activities for ~~[mandatory or voluntary credit]~~ CLE credit and

(2) applications by an entity for accreditation as a course or activity provider. Approved courses and activities may include, but are not limited to, courses and activities conducted in-house or sponsored by Inns of Court, bar sections, governmental entities, or other professional legal organizations. Accreditation of a provider shall constitute prior approval of ~~[MCPE and~~

~~VCLE] CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. [The HSBA shall establish the procedures, minimum standards, and fees for approval of specific courses and activities or accreditation of providers and for revocation of such approval or accreditation.]~~

(g) Regulations. The HSBA may make and adopt such regulations, not inconsistent with this rule, governing the implementation of this rule and the performance of its duties hereunder, as it finds to be appropriate. The HSBA shall liberally and reasonably construe this rule. The HSBA shall endeavor to charge only fees necessary to recover the costs of course materials, neighbor island travel for speakers, refreshments, room rental charges and the like.

(h) Full-time Judges. Federal judges, magistrate judges, bankruptcy judges, U.S. Court of Federal Claims judges, and administrative law judges are exempt from the requirements of this rule. Full-time state judges shall participate for at least ~~[3]~~ three hours each year in a program of judicial education approved by the Committee on Judicial Education. Full-time state judges who are unable to attend, in person, a program approved by the Committee on Judicial Education or who are excused from that program shall comply with this requirement by such other means as the supreme court approves. Full-time state judges shall report the number of approved judicial education hours attended on the ~~[judges']~~ judges' annual financial disclosure form.

(i) Inactive members. Inactive members of the Bar who subsequently elect active status shall complete and report ~~[3]~~ six hours of ~~[MCPE]~~ CLE credits within ~~[3]~~ six months of electing active status.

(j) Newly licensed members. Each person licensed to practice law who elects active status in the year in which he or she is licensed shall ~~[not]~~ be required to comply with the ~~[required 3 MCPE hours mandated by section (a) of this rule for that year. Nothing herein, however, shall modify the obligations imposed by]~~ requirements of Rule 1.14 of these rules, ~~that requires completion of a specific Hawai'i Professionalism course, distinct from general MCPE courses, sponsored jointly by the Hawai'i State Bar and the Supreme Court and offered only bi-annually. Failure to complete the Hawai'i Professionalism course in a timely manner will result in automatic administrative suspension. See Rule 1.14(c) of these rules]~~ and the credits earned from the Supreme Court Mandated Professionalism Course under Rule 1.14 shall count towards the requirements of section (a) of this rule.

(k) Good Cause Exemption or Modification. An active member may apply to the ~~[Hawai'i State Bar]~~ HSBA for good cause exemption or modification from the ~~[MCPE]~~ continuing legal

education requirement. Members seeking an exemption or modification shall furnish substantiation to support their application as requested by the [~~Hawai'i State Bar~~] HSBA. Good cause shall exist when a member is unable to comply with the [~~MCPE~~] continuing legal education requirement because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that are not willful and are beyond the member's control.

(l) **Effective Date; Reporting Period.** This rule [~~is~~] shall be effective January 1, [~~2010~~] 2013. The initial reporting period will be the two calendar [~~year~~] years beginning January 1, [~~2010~~] 2013, and ending on December 31, 2014, and [~~reports for that year shall be submitted in accordance with section (d) of this rule~~] the following reporting periods will be every two years thereafter.

