

**HAWAI‘I SUPREME COURT
COMMISSION ON PROFESSIONALISM
2013 & 2014**

**EIGHTH REPORT TO THE
HAWAI‘I SUPREME COURT**

Committee Members

The Honorable Richard W. Pollack, Chair
Susan L. Arnett, Member
The Honorable Joseph E. Cardoza, Member
Malcom H. M. Chang, Member
Joanne L. Grimes, Member
David W. Hall, Member
Grace Nihei Kido, Member
The Honorable Leslie E. Kobayashi, Member
Gayle J. Lau, Member
The Honorable Katherine G. Leonard, Member
The Honorable Paul T. Murakami, Member
Nathan M. Nikaido, Member
Terence J. O’Toole, Member
Judith A. Pavey, Member
The Honorable Trudy K. Senda, Member
D. Kapua‘ala Sproat, Member
The Honorable Barbara T. Takase, Member
Kevin K. Takata, Member
Calvin E. Young, Member

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

December 31, 2014

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 (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 following Commission meetings are presented in Appendix C: November 30, 2012; April 26, 2013; June 21, 2013; August 9, 2013; November 22, 2013; and June 27, 2014.

V. STATUS REPORTS ON COMMISSION PROJECTS

A. Proposed Revisions to Rules 17 and 22 of the Rules of the Supreme Court of the State of Hawai'i (RSCH).

The Hawai'i Supreme Court adopted revisions to Rules 17 and 22 of the RSCH on November 12, 2014, with an effective date of January 1, 2015. Under the new rules, all actively participating Hawai'i attorneys are required to complete at least three credit hours of continuing legal education each year and at least one credit of ethics every three years.

Significant revisions Rule 22 RSCH include:

- elimination of the credit distinction between Mandatory Continuing Professional Education and Voluntary Continuing Legal Education;
- addition of new definitions for "continuing legal education" and "ethics or professional responsibility education";
- addition of a specific one credit of ethics every three years, to be counted towards the annual continuing legal education requirement;
- addition of a new credit activity which allows a published scholarly legal article to qualify for two credit hours per 1,500 published words.

The revisions proposed to Rules 17 and 22 of the RSCH were the result of a comprehensive review conducted by the Commission. The review was initiated after the Commission received a letter dated September 13, 2012, from Carol Muranaka, then HSBA President, which included the recommendations of the HSBA Committee on Continuing Legal Education regarding Proposed Amendments to Rule 22. After discussion, the Commission referred the proposed Amendments to Rule 22 to the Commission's Mandatory Continuing Legal Education Committee (MCLE committee) at the November 30, 2012 meeting.

The MCLE committee conducted a survey of the Bar membership regarding the recommendations of the HSBA Committee on Continuing Legal Education and reported its findings to the Commission, receiving a very large number of responses. The Commission thoroughly reviewed the responses that were submitted. The Commission's discussions over the proposed revisions to Rules 17 and 22 of the RSCH transpired over several meetings

In December 2013, the Commission submitted to the court a report with proposed changes to Rules 22 (Appendix D). The revisions proposed by the Commission were released for public comment on May 27, 2014. After public comments were received, the court requested that the Commission consider two?? Comments involving proposed changes to Rule 22, After reviewing the proposed comments,, and the Commission made recommendations to the court .

B. Proposed Revision to Rule 1.9 of the Rules of the Supreme Court of the State of Hawaii.

The Commission reviewed proposed amendments to Rule 1.9 of the Rules of the Supreme Court of the State of Hawai'i and submitted recommended revisions to the supreme court on November 14, 2014.

C.

The Chair submitted a letter on behalf of the Commission seeking input or suggestions from the court regarding any areas or topics that the court wished the Commission to pursue. In response to the letter, the court indicated that it was in the Commission's discretion to determine the areas that it would like to consider.

D. Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers.

The Commission is currently reviewing the Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers (Guidelines) to determine whether it revision of the Guidelines would be appropriate to strengthen their purpose .

VI. CONCLUSION

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

Respectfully submitted this 31st day of December, 2014.

/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

KIHAOKAOKA
CLERK OF THE SUPREME COURT
STATE OF HAWAII

2005 MAR 14 PM 1:22

FILED

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.

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.

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.

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."

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.

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 November 30, 2012
2:30 p.m. – 4:00 p.m.
Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Susan Arnett, Judge Joseph Cardoza (via telephone), Dr. Malcom Chang, Steven Dixon, Associate Judge Daniel Foley, David Hall, Grace Kido, Gayle Lau, Judge Paul Murakami, Nathan Nikaido, Terence O'Toole, Judith Pavey, Judge Barbara Takase (via video), Calvin Young
 Guests: Carol Muranaka (HSBA President), Mark Schlov (Co-Chair, HSBA CLE Committee)
 Others: Levi Ho'okano (HSBA Staff), Patricia Mau-Shimizu (HSBA Executive Director), Craig Wagnild (HSBA President-Elect), Julie Yang (HSBA Staff)

HANDOUTS: (1) Agenda
 (2) Minutes of the Meeting of October 15, 2012
 (3) Proposed Amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i in Ramseyer Format
 (4) Proposed Amendments to Rule 17 of the Rules of the Supreme Court of the State of Hawai'i in Ramseyer Format
 (5) Copy of E-mail dated November 1, 2012 from HSBA to Justice Pollack with an Update on MCPE Suspensions
 (6) List of MCLE Requirements by State
 (7) Continuing Professional Education Credit Hour Requirements in the State of Hawai'i

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting. He also thanked Carol Muranaka and Mark Schlov for making a pre-meeting presentation to Commission members who were not present at the meeting of October 15, 2012, regarding the proposed amendments to Rule 22 of the Rules of the Supreme Court of the State of Hawai'i (Proposed Amendments to Rule 22).

II. APPROVAL OF MINUTES OF MEETING OF OCTOBER 15, 2012

The Commission unanimously adopted the minutes of the meeting of October 15, 2012.

III. UPDATE ON COMPLIANCE WITH RULE 22 OF THE RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

Justice Pollack provided a summary on attorney compliance with Rule 22 based on information provided by HSBA. For 2011, a total of eight attorneys were suspended for not completing the three credit hours of Mandatory Continuing Professional Education (MCPE) in 2010. Of these, four attorneys remain administratively suspended.

In 2012, a total of 15 attorneys were suspended for not completing the three credit hours of MCPE in 2011. Of these, six attorneys remain administratively suspended.

An HSBA staff member noted that once attorneys are suspended, HSBA transfers their license to inactive status. The staff member added that many of the attorneys who are noncompliant with the MCPE requirement reside on the continental United States and fail to inform HSBA that they have completed the MCPE requirement. In addition, an attorney may elect to relinquish his or her license after not meeting the MCPE requirement. A Commission member noted that there is confusion in the legal community about whether one has to continue to fulfill continuing education requirements if the attorney is on inactive status.

Justice Pollack also distributed materials provided by HSBA that listed the number of hours that other professions in Hawai'i require for continuing professional education.

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

Justice Pollack opened discussion on the Proposed Amendments to Rule 22. A member voiced opposition to the Proposed Amendments to Rule 22 citing several reasons. One concern expressed was whether proper consideration had been given to all the proposed ways to satisfy credit hours. The member provided some history on MCPE since its inception and the challenges that the HSBA MCPE Committee has encountered. In addition, the member expressed concern that the Proposed Amendments to Rule 22 have not been properly vetted with members of the bar to seek their input. The member suggested that the Commission draft a new proposed rule to address the procedural and substantive problems with the current rule.

Another Commission member expressed concern that when HSBA presented the Proposed Amendments to Rule 22 to the Commission, HSBA failed to provide any body of evidence or research on which the Commission could make a fully informed decision. The member noted that when the HSBA CLE Committee presented the Proposed

Amendments to Rule 22 to the HSBA Board, he recommended the Board send it to the Commission for study and review because it was the Commission that had initially drafted Rule 22. As an alternative to voting on the Proposed Amendment to Rule 22, the member suggested that the Commission study and consider the various factors and circumstances that the Commission examined when initially drafting Rule 22.

It was also suggested that the Commission gather more information on the amount of credits an attorney can carry over from year to year.

A motion was made that the Proposed Amendments to Rule 22 be referred to the Commission's Mandatory Continuing Legal Education Committee (Committee), chaired by Judge Foley and Calvin Young, to review and make recommendations to the Commission. Discussion on the motion resulted in a proposal that the Committee should as part of its review, elicit comments from members of the bar regarding the Proposed Amendments to Rule 22 and report back to the Commission with its recommendation. A member seconded the motion and the Commission unanimously approved the motion.

V. NEXT MEETING

The next meeting was scheduled for April 26, 2013 at 2:30 p.m. It is anticipated that the recommendation of the CLE Committee will be forwarded to the Chair approximately one month prior to the next meeting.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Meeting of April 26, 2013
2:30 p.m. – 4:00 p.m.
Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Judge Leslie Kobayashi, Associate Judge Daniel Foley, Associate Judge Katherine Leonard, Judge Joseph Cardoza (via telephone), Judge Paul Murakami, Judge Trudy Senda (via telephone), Judge Barbara Takase (via video), Susan Arnett, Dr. Malcom Chang, Steven Dixon, David Hall, Janet Hunt, Grace Kido, Gayle Lau, Nathan Nikaido, Terence O'Toole, Judith Pavey, Kapua Sproat, Kevin Takata, Calvin Young
 Others: Joanne Lo Grimes (Nominee to the Commission), Patricia Mau-Shimizu (HSBA Executive Director), Debbie Blanton (HSBA Staff), Levi Ho'okano (HSBA Staff)

HANDOUTS: (1) Agenda
 (2) Minutes of the Meeting of November 30, 2012
 (3) Hawai'i Supreme Court Commission on Professionalism Seventh Report to the Hawai'i Supreme Court (without attachments), submitted December 17, 2012
 (4) Report from the Mandatory Continuing Legal Education Committee of the Commission on Professionalism on the Proposal to Amend Supreme Court Rule 22
 (5) HSBA Survey Results
 (6) HSBA Survey Comments

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting.

II. APPROVAL OF MINUTES OF MEETING OF NOVEMBER 30, 2012

The Commission unanimously adopted the minutes of the meeting of November 30, 2012.

III. REAPPOINTMENT OF MEMBERS TO THE COMMISSION

Justice Pollack thanked the following members for agreeing to serve another four-year term on the Commission: Judge Cardoza, Judge Senda, Dr. Chang, Nathan Nikaido, Janet Hunt, Grace Nihei Kido, and Calvin Young.

IV. APPOINTMENT OF NEW MEMBERS TO THE COMMISSION

Justice Pollack introduced and welcomed Associate Judge Katherine Leonard of the Intermediate Court of Appeals (ICA), representing the appellate courts, and Professor Kapua Sproat of the William S. Richardson School of Law, representing the law school, as new appointments to the Commission.

Judge Leonard has been an Associate Judge of the ICA since January 2008. Prior to being appointed to the bench, she was a partner at the law firm of Carlsmith Ball, LLP, where she practiced complex commercial, financial, real estate, environmental, trust and business law litigation and dispute resolution. She is a graduate of the William S. Richardson School of Law and former Editor-in-Chief of the Law Review.

Professor Kapua Sproat joined the law school in 2007 as an Assistant Professor with Ka Huli Ao Center for Excellence in Native Hawaiian Law and the Environmental Law Program. Professor Sproat is the author of numerous articles in the fields of Native Hawaiian law, Indigenous rights, and natural resource protection and management. Prior to joining the faculty Professor Sproat served as an attorney in the Hawai'i office of Earthjustice for many years, where she continues to serve as of counsel.

V. SUBMISSION OF HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM SEVENTH REPORT TO THE HAWAI'I SUPREME COURT

Justice Pollack informed the Commission that the Seventh Report of the Commission was submitted to the Hawai'i Supreme Court on December 17, 2012. Justice Pollack requested members to contact his chambers if there are any suggested corrections or revisions.

VI. REPORT FROM THE MANDATORY CONTINUING LEGAL EDUCATION COMMITTEE OF THE COMMISSION ON PROFESSIONALISM ON THE PROPOSAL TO AMEND SUPREME COURT RULE 22

Calvin Young, Co-Chair of the Commission's Mandatory Continuing Legal Education Committee (Committee), presented the findings and recommendations of the Committee to the Commission. Mr. Young said that after careful review of the suggested increase of

required continuing legal education (CLE) hours, the records and history of the process that resulted in the original rule, and input from Bar members, including the results of the recent survey of Bar membership, the Committee recommended that the annual requirement of three (3) CLE credit hours be maintained. Mr. Young presented a summary of the results of the survey conducted by the Committee. He noted the overwhelming majority of members of the Bar did not support an increase in the number of hours. In addition, there were many comments about the quality of the CLE courses as well as concerns about management of CLE. Justice Pollack opened the floor for comments by Commission members.

A member commented that the costs of CLE is a prohibitive factor that leads many attorneys to take the cheapest course available to fulfill the requirements, even if that course is not relevant to their area of practice. Other members commented on concerns over the low quality of the courses, especially those viewed on video, that are often used to fulfill requirements by neighbor island attorneys. A member also commented that the minimum of six credit hours per year, as required by the current proposed amendment to Rule 22, cannot be said to be detrimental to one's law practice.

Members discussed whether CLE hours enhance the practice of law and the image of attorneys in the community. A public member noted that continuing education was an evolutionary process and the investment in fulfilling CLE requirements will be beneficial if the parameters are widened and qualities of the courses improved.

Several members noted that the courses that fulfill CLE requirements should be expanded to allow courses relevant to an attorney's area of practice. A member suggested that if the Commission recommends maintaining the requirement of three (3) CLE credit hours per year, the professional education topics that would comply with the "mandatory" requirements should be broadened to allow substantive courses to qualify for CLE credit. A member agreed that broadening the courses that comply with the mandatory credit requirements in Rule 22 would alleviate the current confusion HSBA is encountering in trying to manage the credit process for Mandatory CLE credits, which currently are limited to topics such as legal ethics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

The members shifted their discussion back to the costs, time, and availability of quality courses, especially to attorneys on the neighbor islands. A member noted that if more courses are allowed to satisfy the CLE requirement, attorneys should consider taking full-day courses and paying for quality courses because it would benefit their practice as well as their ability to serve their clients. A member, who is also on the HSBA Board, indicated there is an initiative to increase videoconference capabilities for neighbor island attorneys that would allow a course provided live on Oahu to be interactive, instead of the attorney having to watch a pre-recorded, low-quality recording. In addition, HSBA is

trying to improve the number of affordable courses such as courses held at the law school during lunch; however, such courses at this point are limited to Oahu. A neighbor island member commented that the quality of the recordings was a significant problem and believed that increasing videoconference capabilities would be of minimal value unless the quality of the recording was improved. Several members believe that video recordings are not a substitute for the effectiveness of live presenters.

Justice Pollack suggested that the Commission members proceed to review the proposed amendment to Rule 22, clause by clause, to determine if there was consensus with any of the proposed changes to Rule 22. The members agreed that the courses that qualify for CLE credits should include substantive courses. The proposed increase in the number of hours and whether to require a minimum number of credit hours in ethics were deferred until a later point of the Commission's discussions. In light of the numerous suggestions that were provided in the survey results and by Commission members, it was agreed that the Hawai'i Mandatory Continuing Legal Education Board would make recommendations with regard to the proposed amendments, which would be submitted to Commission members prior to the next meeting.

With no new business, the Commission adjourned at approximately 4:00 p.m.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Meeting of June 21, 2013
2:30 p.m. – 4:00 p.m.
Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Associate Judge Katherine Leonard, Judge Paul Murakami,
 Judge Barbara Takase (via phone), Susan Arnett, Dr. Malcom Chang,
 Joanne Lo Grimes, David Hall, Grace Nihei Kido, Gayle Lau,
 Nathan Nikaido, Terence O'Toole, Judith Pavey, Kapua Sproat,
 Kevin Takata, Calvin Young
 Others: Patricia Mau-Shimizu (HSBA Executive Director)

HANDOUTS: (1) Agenda
 (2) Minutes of the Meeting of April 26, 2013
 (3) Proposed Revisions of the Hawai'i Mandatory Continuing Legal
 Education Board to Rules of the Supreme Court of the State of
 Hawai'i (RSCH) Rule 22

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting.

Justice Pollack introduced and welcomed Joanne Lo Grimes, representing the HSBA, as a new appointment to the Commission. Ms. Grimes is a partner with the law firm of Carlsmith Ball LLP where she represents and advises trustees and fiduciaries in connection with the administration of trusts and assets under their management. She also advises employers on employment-related matters. Ms. Grimes is a graduate of the William S. Richardson School of Law and served as a law clerk to Chief Justice Ronald T.Y. Moon of the Hawai'i Supreme Court.

II. APPROVAL OF MINUTES OF MEETING OF NOVEMBER 30, 2012

The Commission unanimously adopted the minutes of the meeting of November 30, 2012.

III. DISCUSSION OF PROPOSED REVISIONS OF THE HAWAI‘I MANDATORY CONTINUING LEGAL EDUCATION BOARD TO RSCH RULE 22

Susan Arnett, a member of the Hawai‘i Mandatory Continuing Legal Education Board (Board), presented the Board’s revisions to Rule 22 of the RSCH (Rule 22). Ms. Arnett provided a brief overview of the recommendations of the Board that include the following proposed revisions: (1) removing the distinction between Mandatory Continuing Legal Education and Continuing Legal Education (CLE); (2) leaving blank the number of credit hours required per year; (3) redefining CLE as “substantive legal education, or educational materials directed at the practice of law or related to the Hawai‘i Rules of Professional Conduct”; (4) retaining the requirement of an ethics minimum; (5) leaving blank the number of credit hours full-time judges must annually complete, and (6) changing the number of credit hours that may be claimed for preparing for and teaching an approved education course and for publishing a scholarly legal article.

Justice Pollack opened discussion regarding the proposed revisions to Rule 22. The Commission discussed whether to eliminate the word ‘Mandatory’ in the title as well as throughout the rule. The Hawai‘i State Bar Association (HSBA) Executive Director noted that when HSBA receives complaints about the CLE requirements, mentioning the word “Mandatory” helps to quell complaints by attorneys. The Commission decided to retain the word ‘Mandatory’ in the title and in section (a) of the rule.

Justice Pollack distributed rules from other jurisdictions that provide a definition of CLE. A member commented that any revisions to the definition of CLE may be of concern to HSBA in approving credits. The member suggested that any definition include the phrase “approved for credit by the Hawai‘i State Bar.” Another member added that the definition must not be so broad that non-legal courses that improve an attorney’s professionalism such as yoga qualify for credit. After discussion, the Commission agreed to the following CLE definition:

“Continuing legal education,” or “CLE,” is any legal educational activity or program that is designed to maintain or improve the professional competency of lawyers or to expand an appreciation and understanding of the ethical and professional responsibility of lawyers and is approved for credit by the Hawai‘i State Bar.

Members then discussed the ethics requirement and the duration of its eligibility for credit. A member noted that there was consensus that an ethics requirement was worthy; however, there was no agreement on the credit hours of ethics. There were a variety of comments on the number of credit hours that should be required, as well as the length of the carry-over period. A member asked whether HSBA currently had the ability to

monitor a three credit requirement every two years. A representative of HSBA responded it did not have such capability. A member noted attorneys already provide CLE credit hours through self-reporting on the annual bar renewal application. Another member added that the ethics requirement is especially important to attorneys in private law firms because attending courses on client trust accounts may be mandated by a firm's management committee in accordance with the requirements of the firm's insurance underwriters. After discussion, the Commission agreed that the ethics requirement should be one credit hour every three years, and this credit should count towards the annual credit requirement once determined by the Commission.

The Commission next discussed a definition of "ethics" for inclusion in Rule 22. The Commission decided to amend the rule to define "ethics" or "professional responsibility" as follows:

"Ethics" or "professional responsibility" means those courses or segments of courses devoted to: (1) the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers; (3) substance abuse and its effects on lawyers and the practice of law; or (4) client trust administration, bias awareness and prevention, and access to justice. These credit hours are not in addition to Mandatory CLE.

Members discussed the proposal to amend Rule 22 to allow for writing of scholarly articles to qualify for CLE credit. A member commented that receiving 2 credits for publishing a scholarly legal article of 1500 words in a legal publication is very generous. The common length of a scholarly law review article is between 25,000-35,000 words. After discussion, the Commission decided to amend the rule to give credit for publishing a scholarly legal article as follows:

Writing of scholarly legal articles that comply with Regulation 3 of the Continuing Legal Regulations of the State Board of Continuing Legal Education and are published in a bar journal, law review, book, bar association or similarly recognized journal or other legal publication may qualify for 2 credit hours per 1500 published words per year.

Justice Pollack noted that further discussion regarding proposed revisions to Rule 22 will be considered and voted upon at the next meeting.

With no new business, the Commission adjourned at approximately 4:00 p.m.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Meeting of August 9, 2013
2:30 p.m. – 4:00 p.m.
Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Judge Joseph Cardoza, Susan Arnett, Mark Bradbury, Dr.
 Malcolm Chang, Joanne Grimes, David Hall, Grace Nihei Kido, Gayle Lau,
 Nathan Nikaido, Kapua Sproat, Kevin Takata, Calvin Young

HANDOUTS: (1) Agenda
 (2) Minutes of the Meeting of June 21, 2013
 (3) Approved Proposed Revisions of the Hawai'i Mandatory Continuing
 Legal Education Board to Rules of the Supreme Court of the State of
 Hawai'i (RSCH) Rule 22
 (4) Approved Proposed Revisions to the Hawai'i State Bar to Rules of the
 Supreme Court of the State of Hawai'i (RSCH) Rule 17
 (5) Report to the Supreme Court on Proposed Changes to Rules of the
 Supreme Court of the State of Hawai'i (RSCH) Rule 22

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting. He noted that Mark Bradbury from the Office of Disciplinary Counsel was sitting in for Janet Hunt. Ms. Hunt had submitted a letter to the Commission, indicating that she delegated her voting authority to Mr. Bradbury.

II. APPROVAL OF MINUTES OF MEETING OF JUNE 21, 2013

The Commission unanimously adopted the minutes of the meeting of June 21, 2013

III. PRESENTATION BY CHERYL KAKAZU PARK, DIRECTOR OF THE OFFICE OF INFORMATION PRACTICES

Cheryl Kakazu Park, Director of the Office of Information practices, appeared on behalf of the Continuing Legal Education (CLE) Committee of the HSBA. Ms. Park suggested that attorneys be able to receive CLE credits by reading articles in the Hawai'i Bar Journal and taking accompanying quizzes. At the end of the reading the attorney takes a quiz, and a code is provided to allow self-certification to earn the CLE credits. Other states, such as California and Nevada are providing similar opportunities.

Ms. Park stated that this new approach provides many benefits, especially when considering an increase in CLE credits for attorneys. It is more convenient and less time consuming for

attorneys, provides easier and less expensive access to obtaining education credits, particularly for neighbor island attorneys, and provides attorneys with opportunities to expand legal knowledge in multiple areas for a reasonable price.

Ms. Park asked the Commission to clarify whether this option was permissible under the regulations. A member of the Commission noted that Regulation 4 allows for approved courses in alternate formats: videotape, audiotape, DVD, remote-place viewing, online presentations, teleconferencing, and computer self-study.

The Commission inquired about the guidelines for the quizzes, such as the minimum number of questions required and whether the quizzes would have a “passing grade” threshold. It was noted that reading an article from the Bar Journal may take ten minutes while other programs that run approximately 50-60 minutes long would receive equal value in terms of the credits earned.

IV. DISCUSSION OF PROPOSED REVISIONS OF THE HAWAI‘I MANDATORY CONTINUING LEGAL EDUCATION BOARD TO RSCH RULE 22 OF THE RULE OF THE SUPREME COURT OF HAWAI‘I

The Commission reviewed the proposed revisions to Rule 22 and the following changes were agreed to by the members:

Rule 22(b)

- Change “[a]t least once every 3 years every member shall complete 1 hour of approved ethics education” to “[a]t least once every 3 years every member shall complete 1 hour of approved ethics or professional responsibility education.” This sentence was relocated to follow the second sentence in the subsection.
- The sentence, “These credit hours are not in addition to Mandatory CLE” shall be rewritten as follows: “This credit hour is not in addition to the annual CLE requirement.”

Rule 22(e)(4)

- Insert a comma after the word “journal” and before the word “or.”

Rule 22(g)(2)

- Insert a comma after “bar sections” and before the word “or.”

Discussion then turned to the number of required MCPE credit hours that should be required per year. Several members expressed the view that the number of hours should remain at 3 hours. Because of the confusing definition of “CLE,” attorneys have had difficulty in finding programs that are specifically related to their practice so there is discontent among attorneys. Instead of increasing the required number of credit hours, the focus should be on making programs more relevant to the attorneys.

Other members noted that there is no correlation between CLE and the number of complaints filed with ODC. One member stated that he does not think there should be a CLE requirement, but he did not support eliminating the requirement because that would invite non-lawyers to police the profession. He believed that professional attorneys learn every day, and therefore CLE does not need to be mandated.

Other issues discussed included the costs incurred in fulfilling the CLE requirements. Additionally, a recurring problem has been the quality and availability of programs for neighbor island attorneys.

The Commission discussed Hawai'i's CLE requirement as compared to other states. Out of 50 states, six states do not have CLE requirements. Hawai'i is one of the only states that requires only 3 hours per year, while other states vary between 3-10 hours.

Members decided to vote on which course of action to pursue with respect to the required amount of CLE hours:

Option 1: No current increase in the CLE credit hour requirement

Option 2: Current increase in the CLE credit hour requirement

Option 3: Possible future increase in two years, on the condition that certain factors are being met (e.g., increase in quality of programming, focus on substantive law rather than just ethics)

Voting was completed by secret ballot, and the results were tabulated as follows:

No Current Increase: 6 Votes

Current Increase: 1 Vote

Possible Future Increase: 5 Votes

It was discussed whether a vote for "possible future increase" equated with a vote for "No Current Increase." A member suggested that the vote be made for either "Increase" or "No Increase," and the Commission should take up the "Possible Future Increase" option later once the conditions pertaining to quality of programming have been met. However, it was observed that 11 out of the 12 votes cast voted essentially to not presently increase the requirement, providing sufficient clarity as to the outcome of the vote.

Justice Pollack suggested that it would be helpful to provide a report to the Court that summarized the HSBA survey, discussed the comments provided, and included other background information to the supreme court. Susan Arnett volunteered to draft the report.

The Commission discussed ideas for increasing offerings for CLE credits, allowing volunteer work to be an approved method to earn CLE credits, and providing ways to reduce costs for CLE programs.

A Commission member inquired as to whether the rules were broad enough to encompass Hawai'i Bar Journal quizzes as an option to earn CLE credits. A member stated that Rule 22(e)(3) and (f) would allow this option.

- Section (e)(3), if reading and quiz-taking was completed on the computer
- Section (f), if the activity was sponsored by the Hawai'i Bar Journal, as it is sponsored by HSBA

A member stated that Section (e)(3) would not apply because the Hawai'i Bar Journal would be received in hard copy, whereas the rule applies to non-tactile formats. Discussion followed on modifying the rule to address this issue, and agreement was reached as stated below.

The Commission agreed to the following additional changes to Rule 22:

Rule 22(e)(3)

- The Commission deleted “audio, video, or other technology-delivered” from the subsection.

Rule 22(h)

- The Commission decided that full-time state judges must participate for at least three hours a year.

Rule 22 (i)

- The Commission decided to require inactive members of the Bar who subsequently elect active status to complete and report three hours of CLE education, including one hour of ethics or professional responsibility.

Rule 22(j)

- The Commission deleted the requirement for 3 MCPE credits, and instead inserted language that requires CLE hours mandated by section (a).

Justice Pollack stated that Chief Justice Recktenwald received an email asking whether a person who attends a course on the Rules of Civility can receive CLE credits. A member of the Commission responded that it was permissible because the definition of CLE under Rule 22(a) includes “understanding ethical and professional responsibility of lawyers.”

V. DISCUSSION OF PROPOSED REVISIONS TO RULE 17 OF THE RULES OF THE SUPREME COURT OF HAWAI'I

The Commission agreed upon the following changes to Rule 17:

Rule 17(d)(1)(D)

- The language “completed in the previous year reporting period” should be replaced with “previous year.” This change was to avoid confusion between two reporting periods: the annual bar license reporting period, and the three-year reporting period.
- Additionally, the following language was added at the end of the subsection: “and including specifying the number of hours of ethics completed.”

Rule 17(d)(4)(B)

- The language “reporting period” was replaced with “year” for the same reasons stated above.

Rule 17(d)(5)(B)(1)

- The language was changed to “completed 3 hours of CLE, which must include a minimum of 1 credit hour in approved ethics or professional responsibility education, and such hours shall not be counted for the current year;”

VI. NEXT MEETING/CLOSING

The Commission decided on a timeframe for completing the Report on the proposed rule changes, and then forwarding it to the supreme court.

- August 16, 2013: Circulate Report to Commission members for comment.
- September 6, 2013: Forward Report to the supreme court

With no new business, the Commission adjourned at approximately 4:10 p.m. Next meeting scheduled for November 22, 2013 at 2:30 p.m.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Meeting of November 22, 2013
2:30 p.m. – 4:00 p.m.
Supreme Court Conference Room

MINUTES

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Judge Leonard, Judge Takase (phone), Dr. Malcolm Chang,
 Nathan Nikaido, Judith Pavey, Kapua Sproat, Kevin Takata, Calvin Young,
 David Hall, Susan Arnett, Joann Grimes (phone)
 Guests: Debbie Blanton, Levi Ho'okano

HANDOUTS:

- (1) Agenda
- (2) Minutes of the Meeting of August 9, 2013
- (3) Approved Proposed Revisions of the Hawai'i Mandatory Continuing
 Legal Education Board to Rules of the Supreme Court of the State of
 Hawai'i (RSCH) Rule 22 (clean version)
- (4) Approved Proposed Revisions of the Hawai'i Mandatory Continuing
 Legal Education Board to Rules of the Supreme Court of the State of
 Hawai'i (RSCH) Rule 22 (Ramseyer version)
- (5) Approved Proposed Revisions to the Hawai'i State Bar to Rules of the
 Supreme Court of the State of Hawai'i (RSCH) Rule 17 (clean
 version)
- (6) Approved Proposed Revisions to the Hawai'i State Bar to Rules of the
 Supreme Court of the State of Hawai'i (RSCH) Rule 17 (Ramseyer
 version)
- (7) Report to the Supreme Court on Proposed Changes to Rules of the
 Supreme Court of the State of Hawai'i (RSCH) Rule 22
- (8) Order Establishing the Hawai'i Supreme Court's Commission on
 Professional

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting.

II. APPROVAL OF MINUTES OF MEETING OF AUGUST 9, 2013

Two corrections were made to the minutes of August 9, 2013: a typographical error to Kapua Sproat's last name was corrected, and the date of the minutes that were approved was corrected to reflect June 21, 2013. With those changes, the Commission unanimously approved the minutes of the meeting of August 9, 2013.

III. PROPOSED REVISIONS TO RSCH RULE 22 AND 17

Commission members suggested several technical revisions to Rule 22 that are set forth below, all of which were unanimously approved.

Rule 22(b)

- Insert the word “active“ on the third line after the word “every” and before the word “member.”
- Insert a comma after the word “public” in the last sentence.

Rule 22(d)

- Insert a bracket before the word “annually” on second line.
- In subparagraph (2), remove brackets enclosing “2”and the bracketed revision.

Rule 22(e)(4)

- A period is inserted after the word “publication.” A new sentence concludes the subparagraph as follows: “Two credit hours may be claimed per 1500 published words per year.”

Rule 22 (g)

- In subparagraph (1), a comma is inserted after the word “credit.”
- In subparagraph (2) at line 3, a comma is inserted after the word “sections.”

Rule 22 (i)

- The word “approved” is deleted in the second line.

Rule 22 (i)

The words “and offered only bi-annually” are deleted in the sixth line.

No suggested revisions were made to RSCH Rule 17.

IV. REVIEW OF REPORT ON PROPOSED REVISIONS TO RSCH RULE 22

A draft of the Report regarding the recommendation to amend RSCH.22 was circulated to Commission members. A brief summary of the report was given by Ms. Arnett. After Commission members reviewed the Report and had the opportunity to discuss it, several suggestions to revise the Report were made and approved by Commission members. It was decided that the revised Report, incorporating the changes, would be circulated to members by email in the week following the meeting. Commission members would be able to offer any further suggestions regarding the Report or as to any of the revisions. The Report was approved by Commission members subject to any further changes approved by members.

V, DISCUSSION OF OTHER AREAS WITHIN COMMISSION'S PURVIEW

Commission members received a copy of the Order that had established the Commission and the National Action Plan survey, which prioritized 35 implementation goals. Members commented that many of these goals had been accomplished by groups within the legal community. After a brief discussion of possible areas of focus for the Commission, it was suggested and agreed to by the Commission that Justice Pollack would request guidance from the supreme court regarding other areas that the court may wish the Commission to focus upon.

VI. NEXT MEETING/CLOSING

The Commission decided on a general time frame to circulate the finalized versions of RSCH Rule 22 and the Report on the proposed rule changes, and then to forward it to the supreme court.

With no new business, the Commission adjourned at approximately 3:50 p.m. The next meeting will be scheduled in conjunction with a response received from the court.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM
Meeting of June 27, 2014
2:30 p.m. – 4:00 p.m.
Supreme Court Administrative Conference Room

PRESENT: **Chair:** Associate Justice Richard W. Pollack
 Members: Judge Leonard, Judge Takase (phone), Judge Murakami, Dr. Malcolm Chang, Nathan Nikaido, Judith Pavey, Kapua Sproat (phone), Kevin Takata, Calvin Young, David Hall, Susan Arnett, Terence O'Toole

HANDOUTS: (1) Agenda
 (2) Minutes of the Meeting of November 22, 2013
 (3) Approved Proposed Revisions of the Hawai'i Mandatory Continuing Legal Education Board to Rules of the Supreme Court of the State of Hawai'i (RSCH) Rule 22 (Ramseyer version)
 (4) Approved Proposed Revisions to the Hawai'i State Bar to Rules of the Supreme Court of the State of Hawai'i (RSCH) Rule 17 (Ramseyer version)
 (5) Proposed Amendment to Rules 17 and 22 of the Rules of the Supreme Court of the State of Hawai'i

I. WELCOME AND ANNOUNCEMENTS

Justice Pollack welcomed and thanked the members of the Commission for attending the meeting.

II. APPROVAL OF MINUTES OF MEETING OF AUGUST 9, 2013

A typographical error in the header for section IV was corrected. With this change, the Commission unanimously approved the minutes of the meeting of November 22, 2013.

III. PROPOSED CHANGES TO CHANGES TO RSCH RULES 17 AND 22 (released for public comment on May 27, 2014)

It was noted that the revisions proposed by the Commission were released for public comment on May 27, 2014 by the supreme court. Commission members suggested only one clarifying change to Rule 22, set forth below, which was approved unanimously:

Rule 22(e)(3)

- Change the word "studying" to "completing."

No revisions were suggested to RSCH Rule 17.

IV. DISCUSSION OF OTHER AREAS WITHIN THE COMMISSION'S PURVIEW

The Chair reported to the Commission regarding the supreme court's response to a letter submitted to the court on behalf of the Commission. The letter had sought input or suggestions from the court regarding any areas or topics that the court wished the Commission to pursue. The Chief Justice and the court indicated that it was in the Commission's discretion to determine the areas it would like to consider.

The Commission proceeded to discuss areas within the Commission's purview that may merit consideration. These included taking a role in coordinating continuing education courses from various entities in the legal community. Additionally, concerns regarding rules governing pro hac vice counsel were raised. The Chair noted that a committee is considering that issue presently. When the proposed revisions to the rules are released for public comment, they will be forwarded to Commission members.

The civility of attorneys in their representation of clients in a broad range of litigation activities was raised as a concern. With particular court calendars, the problem appears to be more evident. It was noted that the Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers (Guidelines) was last updated in 2004. Members believed that it would be beneficial to re-visit the rules for possible updating or revision.

The Chair stated that prior to next meeting he would circulate to Commission members the Guidelines and information as to approaches taken by other jurisdictions regarding civility guidelines or rules. The Chair also indicated that in the future he would review the activities of professionalism commissions from other jurisdictions for other areas that the Commission may wish to consider.

V. NEXT MEETING/ADJOURNMENT

The next meeting was scheduled for October 10, 2014, at 2:30 p.m. With no new business, the meeting adjourned at 3:45 P.M.

Appendix “D”

**Report of Hawai'i Supreme Court's Commission
on Professionalism with Recommendation to Amend
Rule 22 of the Rules of the Supreme Court of the State of Hawai'i**

This report from the Commission on Professionalism (the Commission) is being submitted to the Supreme Court of the State of Hawai'i (the Court) with a recommendation to amend Rule 22 of the Rules of the Supreme Court (Rule 22).

Historically, the Commission was tasked with enhancing professionalism among lawyers. Initially, the Commission decided to focus on improving ethical competence of lawyers. After a series of meetings and a survey of Hawai'i State Bar members as well as an examination of what other states were doing in this area, the Commission initially recommended against imposition of mandatory continuing legal education and continuing the emphasis on voluntary continuing legal education.

However, the Hawai'i Supreme Court decided to require mandatory continuing legal education and, with input from the Commission, enacted our current Rule 22. Briefly, our current rule requires three hours of mandatory continuing professional education (MCPE) and encourages an additional minimum 9 credit hours per year of voluntary continuing legal education (VCLE). Rule 22 states that qualifying professional education MCPE 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. Rule 22 also provides that, for new admittees, the Hawai'i Professionalism course required under Rule 1.14 of the Supreme Court Rules fulfills the 3 credit hour requirement of Rule 22.

Over the past year, the Commission has studied the issue of whether our current Rule 22 is accomplishing what it was created to do. With input from members of the Commission, the Office of Disciplinary Counsel (ODC), the judicial branch, the Hawai'i State Bar Association (HSBA), and bar members through a survey conducted with the assistance of the HSBA, the Commission has concluded that our current Rule 22 is cumbersome in its application and, most significantly, does not do the most effective job of improving and enhancing lawyer competence.

The identified problem has been the application of Rule 22 with regard to the “included topics” listed in the rule. One interpretation holds that “case and client management” and “malpractice prevention,” for example, necessarily include substantive law courses. In other words, a lawyer who receives substantive training in an area of law (e.g. products liability, real property, wills and trusts, criminal, etc.) will be better able to engage in effective “case management” as well as accomplish “malpractice prevention.” Likewise, a litigator receiving substantive training in the rules of evidence will be a more effective representative in contested court hearings, which again relates to “malpractice prevention.” On the other hand, if terms such as “case management” and “malpractice prevention” are interpreted in that manner, why does Rule 22 distinguish between MCPE and VCLE? The fact that the rule does have such a distinction indicates that there is legal training that was not intended to be part of MCPE. That body of interpretation holds that only ethical and the other enumerated topics qualify for MCPE while substantive legal training is strictly VCLE.

The Hawai‘i State Board of Continuing Legal Education (the Board) was created and tasked with implementing Rule 22. The Board drafted and the Supreme Court approved Continuing Legal Education Regulations for implementing Rule 22. Since the implementation of Rule 22, the Board has been wrestling with the seeming contradiction discussed above. Put another way, isn’t all legal education going to benefit each individual’s practice of law? But, under the current Rule 22, how does one reconcile the position that any legal training would seemingly satisfy the listed topics with the fact that the rule clearly provides for two categories of legal training, MCPE and VCLE? As Board members have come and gone, the interpretation of the current Rule 22 has undergone evolution, i.e., a topic that a previous Board found to be ineligible for MCPE, the new Board now finds to satisfy MCPE.

This conundrum has been the source of a significant amount of frustration, not only for Board members, but more importantly, for members of the Hawai‘i State Bar. Lawyers have steadily complained that they have to go far outside their disciplines to find courses that satisfy MCPE requirements while courses they would like to take and believe would improve their provision of legal representation do not qualify for MCPE, but instead are only credited as VCLE.

When the Board conveyed the ongoing difficulty of implementing Rule 22 to the Supreme Court, the Court directed this Commission to reexamine the issue of continuing legal education. The Commission heard from the HSBA Continuing Legal Education Committee that recommended a change in definition as well as a significant increase in mandatory hours, from 3 to 12. The leadership of HSBA indicated that the organization took no position on whether the hours should be increased as they believed that question was squarely within the purview of the Commission to study and make recommendations to the Court.

Once again, the Commission sought input from the ODC as well as judges and attorneys, again conducting a survey to ascertain the current views of continuing legal education, mandatory and voluntary. It was noted that one reason the somewhat convoluted 'definition' that is currently in Rule 22 was created was to address the areas of perceived need by ODC at the time the Rule was enacted. However, representatives from ODC indicated that the current 'definition' no longer relates in any direct way to 'areas of need' that they see in their work.

As a result of these discussions, a number of points became clear:

- 1) The implementation of Rule 22 has created in Hawai'i attorneys a habit of expecting to participate in ongoing legal education each year.
- 2) It appears that many, if not most, Hawai'i attorneys do more than the required number of hours of CLE.
- 3) Hawai'i attorneys are very frustrated at trying to come up with topics that satisfy the constraints of the current MCPE 'definition.'
- 4) More needs to be done to offer no-cost or low-cost programs that will satisfy CLE requirements, particularly for non-Oahu based attorneys.
- 5) The technology and quality of all non-live programs needs to be significantly improved.

To that end, we are recommending the following:

- 1) An amendment to Rule 22 that will require three hours of continuing legal education each year; CLE will be defined as “any legal educational activity or program that is designed to maintain or improve the professional competency of lawyers or to expand an appreciation and understanding of the ethical professional responsibility of lawyers and is approved for credit by the Hawai‘i State Bar.”
- 2) At least once every three years every member shall complete at least one hour of approved ethics or professional responsibility education.
- 3) No increase in the three-hour requirement at this time.

We note that the issue of whether to recommend an increase in the number of required hours was the subject of spirited discussion over a number of meetings. However, a majority of voting Commission members concluded that changing the definition first was the priority at this time. Recognizing the heightened frustration that lawyers have expressed in recent years, it was considered appropriate to address the concern that required hours apply to all legal training that would improve and enhance our profession. We further recognize that the issue of whether the number of hours should be increased will bear more examination in the years to come. We are also hopeful that we can work toward facilitating an increased number and variety of affordable or free programs to satisfy the CLE requirement. Many would like to see that accomplished before the hours are increased.

11-25-13

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)] of approved continuing legal education (CLE) during each annual reporting period. [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. The Hawai'i Professionalism course required under Rule 1.14 of these rules fulfills the 3 credit hours of this section, but standard MCPE courses described in this section do not conversely fulfill the requirements of Rule 1.14 of these rules.] "Continuing legal education," or "CLE," is any legal educational activity or program that is designed to maintain or improve the professional competency of lawyers or to expand an appreciation and understanding of the ethical and professional responsibility of lawyers and is approved for credit by the Hawai'i State Bar.

(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. At least once every 3 years every active member shall complete 1 hour of approved ethics or professional responsibility education. This credit hour is not in addition to Mandatory CLE. "Ethics" or "professional responsibility" means those courses or segments of courses devoted to: (1) the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the judicial system, the public, and other lawyers; (3) substance abuse and its effects on lawyers and the practice of law; or (4) client trust administration, bias awareness and prevention, and access to justice.

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

(d) Mandatory Certification, Reporting, and Record Keeping. Each active Bar member shall [annually:

(1) certify the number 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. A member shall maintain records of approved MCPE credit hours and of approved VCLE credit hours for the 2 most recent reporting periods, and these records shall be subject to audit by the Hawai'i State Bar. Any active Bar member who fails to cooperate with the Hawai'i State Bar when audited shall be deemed to be in noncompliance with this rule] certify on the annual registration form whether the member is in compliance with this rule and shall maintain certification records for

the three most recent reporting periods. These records shall be subject to audit by the Hawai'i State Bar. Non-cooperation with an audit shall be deemed noncompliance with this rule.

(e) Courses and Activities. The requirements of this rule may be met, subject to prior approval as set out in sections (f) and (g) of this rule, 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, 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] 50 minutes of time spent teaching, i.e. 3 hours may be claimed for teaching a [1 hour] 50 minute course;

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

(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 scholarly legal articles that comply with Regulation 3 of the Continuing Legal Education Regulations of the State Board of Continuing Legal Education and are published in a bar journal, law review, book, bar association or similarly recognized journal, or other legal publication. Two credit hours may be claimed per 1500 published words per year.

(f) Approved Courses or Activities. Courses and activities sponsored by the Hawai'i State Bar or the American Bar Association[, and classified by the Hawai'i State Bar as MCPE or VCLE,] qualify for CLE credit under this rule.

(g) Approval and Accreditation Authorization. The Hawai'i State Bar is authorized to approve or disapprove:

(1) other educational courses and activities for [mandatory or voluntary] 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, or other professional legal organizations. Accreditation 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 Hawai'i State Bar. The Hawai'i State Bar 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.

(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 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 3 hours of [MCPE] CLE, including 1 hour of approved ethics or professional responsibility education, within 3 months of electing active status. [The 3 hours of MCPE credit required under this rule are separate and distinct from the annual 3 hours of MCPE required pursuant to Rule 22(a), above.]

(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] CLE hours mandated by section (a) of this rule for that year. Nothing herein, however, shall modify the obligations imposed by Rule 1.14 of these rules, [that] which requires completion of a specific Hawai'i Professionalism course, distinct from general [MCPE] CLE 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.

(k) Good Cause Exemption or Modification. An active member may apply to the Hawai'i State Bar for good cause exemption or modification from the [MCPE] CLE requirement. Members seeking an exemption or modification shall furnish substantiation to support their application as requested by the Hawai'i State Bar. Good cause shall exist when a member is unable to comply with the [MCPE] CLE 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] These amendments are effective January 1, [2010] 20. The initial reporting period will be the calendar year beginning January 1, [2010] 20, and reports for that year shall be submitted in accordance with section (d) of this rule.