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SCRU-11-0001047

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I RULES OF PROFESSIONAL CONDUCT

ORDER AMENDING THE HAWAI‘I RULES OF PROFESSIONAL CONDUCT
(By: Reckentwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

IT IS HEREBY ORDERED that the Comments to Rule 5.5 of the Hawai‘i Rules of Professional Conduct are amended, by adding new Comment [3], effective July 1, 2022, as follows (new material is underscored):

Rule 5.5. UNAUTHORIZED PRACTICE OF LAW.

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law; or
- (c) allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer to have any contact with the clients of the lawyer either in person, by telephone, or in writing or to have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

COMMENT:

[1] *The definition of the practice of law is established by law and varies from one jurisdiction to*

another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.

[2] Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3 of these Rules. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[3] Lawyers not authorized to practice law in Hawai'i might lawfully remotely practice the law of the jurisdictions in which they are permitted to practice, to the extent permitted by that jurisdiction, while they are physically present in Hawai'i, provided they do not (a) hold themselves out as being licensed to practice in Hawai'i, (b) advertise or otherwise hold themselves out as having an office in Hawai'i, (c) provide or offer to provide Hawai'i legal services, or (d) engage in any other activity connected to the practice of law in Hawai'i other than their mere physical presence in Hawai'i. Having Hawai'i contact information listed on websites, letterheads, business cards, advertising, or the like would tend to improperly suggest a Hawai'i office or presence that could be deemed to constitute the unauthorized practice of law in Hawai'i. On the other hand, lawyers authorized to practice law in Hawai'i may remotely practice law in Hawai'i while they are physically present outside of Hawai'i, provided they are not prohibited from doing so in the jurisdiction where they are physically present. C.f., ABA Formal Opinions 495 (2020) and 498 (2021).

[4] Paragraph (c) prohibits an attorney who employs or otherwise utilizes a lawyer who is suspended or disbarred, or who resigned in lieu of discipline, from allowing that lawyer to have any contact with the attorney's clients or others who have legal dealing with the attorney's office. In order to protect the public, strict prohibitions are essential to prevent permissible

paralegal activities from crossing the line to giving legal advice, taking fees, or misleading clients and others who deal with the attorney's office.

DATED: Honolulu, Hawai'i, March 16, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

