

Electronically Filed
Supreme Court
SCRU-11-0000504
24-JUN-2022
08:21 AM
Dkt. 13 ORD

SCRU-11-0000504

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES OF THE DISCIPLINARY BOARD OF THE HAWAI‘I SUPREME COURT

ORDER AUTHORIZING PUBLICATION OF THE RULES OF
THE DISCIPLINARY BOARD OF THE HAWAI‘I SUPREME COURT
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

IT IS HEREBY ORDERED that Rules 29 and 31 of the Rules of the Disciplinary Board of the Hawai‘i Supreme Court, which were amended by the Board on January 29, 2022 to add Rule 29(d) and Rule 31(f), effective February 1, 2022, in accordance with Rule 2.4(e)(6) of the Rules of the Supreme Court of the State of Hawai‘i, shall be published in Exhibit A-2 to the Rules of the Supreme Court of the State of Hawai‘i, effective upon the filing of this order, as follows:

Rule 29. Board’s Role in Cases of Disbarred and Suspended Attorneys.

The following duties of the Board are delegated to Counsel:

(a) Publication of notices of Suspension and Disbarment required by RSCH 2.16(e).

(b) Transmission of certified copies of orders of Suspension and Disbarment to judges as required by RSCH 2.16(f). The certified copies referenced to herein shall be transmitted, at a minimum, to all State judges, and to the Chief Clerks of the United States District Court for the District of Hawai'i, the Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

(c) Issuance of a press release regarding the matter.

(d) Disbarment or suspension of an Attorney shall not preclude investigation of the Attorney's conduct in other pending or new matters, to gather and preserve evidence; however, such matters may be held in abeyance unless and until the attorney seeks reinstatement. In cases where the other pending or new matter is abated, Disciplinary Counsel shall notify the Attorney that the abatement may be lifted in reinstatement is sought and pursued either separately or in combination with the reinstatement effort.

Rule 31. Proceedings Where an Attorney Is Declared Incompetent or Alleged to Be Incapacitated.

(a) Judicial Determination of Incompetency and Involuntary Commitment. Whenever it comes to Counsel's attention that an Attorney has been judicially declared incompetent by a court or involuntarily committed on the grounds of incompetency or disability in any jurisdiction, Counsel shall obtain a certificate of the adjudication or commitment, if possible.

(i) Where the adjudication or commitment did not occur in this jurisdiction, Counsel shall obtain such additional documents as may be needed to show that the proceeding, if it had occurred within this State's jurisdiction, would have been deemed an adjudication of incompetency or commitment.

(ii) Counsel shall file with the Supreme Court a Petition for Judicial Determination of Incompetency appending the required documents and requesting that the Supreme Court enter an order under RSCH 2.19(a) transferring the Attorney to inactive status effective immediately.

(b) **Investigation by Counsel and Board Action; Proceedings Pursuant to RSCH 2.19(b).** Whenever it comes to Counsel's attention that an Attorney is or may be incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or because of the use of drugs or intoxicants, Counsel may investigate the matter and prepare a report of the investigation, including Counsel's summation of the file and a confidential recommendation as to the disposition of the matter.

(i) Before concluding an investigation, Counsel shall notify the Respondent that within a reasonable time, he or she may state his or her position with respect to the grounds of disability under investigation, which shall be set out in the notice. The report shall be submitted by Counsel to the Board Chairperson and shall include any communication received from the Respondent. If the Board Chairperson decides that a proceeding shall be instituted in the Supreme Court under RSCH 2.19(b), Counsel shall prepare the necessary petition and proceed as provided in Paragraph (a) of this rule. Counsel shall allege the grounds of disability authorized by the Board Chairperson as the basis for the petition.

(ii) If the Board Chairperson decides that no proceeding should be instituted under RSCH 2.19(b), the Attorney whose capacity has been in question shall be so notified by Counsel.

(c) Proceedings to which RSCH 2.19(c) Applies. If Counsel determines that RSCH 2.19(c) applies by reason of the Respondent's contention in a disciplinary proceeding that he or she is suffering from a disability, Counsel shall file a petition with the Supreme Court setting out or appending the pertinent portions of the record and requesting that the Supreme Court: (i) enter an order under RSCH 2.19(c) transferring the Respondent to inactive status until a determination is made of the Respondent's capacity to practice law; and (ii) determine the Respondent's capacity in a proper proceeding.

(d) Copies; Service. Copies of all petitions and supplementary petitions filed with the Supreme Court pursuant to RSCH 2.19 and this rule, together with a copy of the Supreme Court's order transferring the Attorney to inactive status, shall be served on the Attorney, his or her guardian, if any, the director of the institution to which he or she has been committed, if any, and such other persons as the Court may order.

(e) Notice of Transfer to Inactive Status. The Board delegates to Counsel its duties under RSCH 2.19(d) and (e). In addition, certified copies of any order of transfer to inactive status shall be transmitted, at a minimum, to all State judges and to the Chief Clerks of the United States District Court for the District of Hawai'i, the Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

(f) Consistent with RSCH Rule 2.19(h), the provisions of Rule 29(d) shall apply, should the Attorney seek reinstatement pursuant to RSCH Rule 2.19(g).

DATED: Honolulu, Hawai'i, June 24, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

