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SCRU-11-0000068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I

ORDER AMENDING RULES 10.3 AND 10.8 OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

IT IS HEREBY ORDERED that Rules 10.3 and 10.8 of the Rules of the Supreme Court of the State of Hawai'i are amended, effective upon the filing of this order, as follows (new material is underscored):

Rule 10. LAWYERS' FUND FOR CLIENT PROTECTION.

10.3. Payment of claims.

(b) Nonreimbursable losses. The following losses shall not be reimbursable:

- (1) Losses of a spouse, children, parents, grandparents, siblings, partners, associates, employers and employees of, or business entities or trusts owned or beneficially owned by an attorney causing the losses;
- (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogated interest;
- (3) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar insurance or surety contract.

(4) Consequential or incidental damages, such as lost interest, or lawyers' fees, or other costs incurred in seeking recovery of a loss.

10.8. Confidentiality.

(a) General rules of confidentiality. The application, the trustee's final determination awarding or disallowing reimbursement of a claim, and the amount of the award are public records. The following records shall be confidential and shall not be accessible to the public: the work product of the Lawyers' Fund for Client Protection, reports and materials obtained from any governmental and/or judicial agency which restricts public access to the records, records of the Office of Disciplinary Counsel and the Disciplinary Board, and any other records obtained from confidential sources. Records which contain confidential and restricted information may be made available to the public with the confidential and restricted information deleted. All other records, may be made available to the public. This provision shall not be construed to deny access to relevant information by agencies as the trustees shall authorize or the release of statistical information which does not disclose the identity of the parties.

(b) Exchange of information and sharing of investigative and administrative resources with Disciplinary Board. All claims for reimbursement submitted to the trustees shall be forwarded to the Chairperson of the Disciplinary Board for institution of whatever proceedings before the Disciplinary Board which the Chairperson of the Disciplinary Board deems appropriate. The Chairperson of the Disciplinary Board may, in the Chairperson's discretion, allow the trustees to have access, during the trustees' investigation of any claim for reimbursement from the Fund, to Disciplinary Board files which pertain to the alleged loss. The trustees shall have access to the investigative and administrative resources of the Disciplinary Board, and may also, upon agreement between the trustees and the Disciplinary Board, be housed within the office facilities of the Office of Disciplinary Counsel, but the trustees shall reimburse the Disciplinary Board for the cost of such resources and housing as determined by the Disciplinary Board.

(c) Communication with the claimant and the attorney claimed against. A claimant and the attorney claimed against shall be advised of the status of the trustees' consideration of the claim and shall be advised of the final determination of the trustees.

(d) Public statements by trustees. In any case, the trustees may issue statements as deemed appropriate in order to confirm the pendency of the investigation or to clarify the procedural aspects of the proceedings. The statement shall be first submitted to the attorney involved or the attorney's representative for any comments and criticisms prior to its release, but the trustees in their discretion may release the statement as originally prepared.

(e) Disclosure of evidence of a crime. Upon receipt of trustworthy evidence that an alleged defalcating attorney has committed a crime, in order to protect the interests of the public, the administration of justice, or the legal profession, the Chairperson of the Fund may disclose evidence to appropriate law enforcement or prosecuting authorities. The trustees may not, however, disclose

that an attorney voluntarily sought, received, or accepted treatment from the Attorneys and Judges Assistance Program or the record of such treatment.

DATED: Honolulu, Hawai'i, August 4, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

