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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 the amended version of Rule 12 of the Rules of the Disciplinary Board of the Hawai‘i Supreme Court, which was adopted by the Board on November 23, 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 January 1, 2023, as follows (new language underscored, deleted language struck-through):

Rule 12. COMMENCEMENT; SCOPE OF INVESTIGATION; COMPLAINT PROCESSING TIME [LIMITS] GOALS; PROTECTIVE ORDER.

(a) Duty of Counsel to Investigate. Counsel has a duty to investigate all matters involving alleged violations of the Hawai'i Rules of Professional Conduct in accordance with RSCH 2.6(b) (2) and 2.6(b) (3).

(b) Scope of Investigation. Counsel shall investigate to elicit factual information relevant to any misconduct alleged or reasonably indicated by the circumstances.

(c) Motion for Protective Order.

(i) If a Respondent disputes the information sought, he or she may file a motion for protective order with the Board Chairperson through the Filing Clerk. A copy shall be served upon Counsel, and Counsel shall have an opportunity to respond. The Board shall decide the motion on the written submissions within 30 days. In his or her discretion, the Board Chairperson may hold oral argument on the motion.

(ii) If the motion for protective order is denied, a Respondent may file a motion for protective order with the Hawai'i Supreme Court. A copy shall be served upon Counsel, and Counsel shall have an opportunity to respond.

(d) Complaint Processing Time [Limits] Goals.

(i) This Rule intends that the period of time from ODC's ~~[receipt of a Grievance;]~~ opening of a case (either by receipt of a complaint or by ODC's initiation of an inquiry[;]) to the [filing] institution of [a Petition for Discipline] Formal Disciplinary Proceedings, or other disposition of the case, pursuant to the order of a Reviewing Board Member (as provided for in DBR Rule 16) [shall] should not exceed eighteen months[240 days].

(ii) Within ~~[six] fifteen months[180 days]~~ from the ~~[date a Grievance is received, or the date ODC initiated an inquiry]~~ opening of an ODC case, ODC's investigation and recommendation for disposition [shall] should be provided to a Reviewing Board Member pursuant to RSCH 2.7[(4)](a) [(see) and DBR Rule 16[)].

(iii) Any formal Petition for Discipline or other disposition [shall] should be filed or otherwise implemented within two months[60 days of] following the date [a recommendation is made to] institution of formal proceedings or other disposition is ordered by a Reviewing Board Member.

(iv) The ~~[following extensions of time may be granted by the Board Chairperson: up to an additional six months for investigation and recommendation for disposition; and up to an additional 30 days for the filing of a Petition. Additionally, a matter may be designated as "Complex" by the Chairperson, in which case further reasonable extension may be granted at the Chairperson's discretion]~~ Chairperson may exercise discretion to grant extensions on showing of cause.

(e) Failure to Meet Time [Limits] Goals. Failure of the ODC to meet the time frames provided for in ~~[these rules is]~~ section (d) shall not be a grounds for the dismissal of any matter, but may be raised by a Subject Attorney as a mitigating factor upon a showing of material prejudice. [See: ABA Std.

Imposing Lawyer Sanctions, 9.32(j); see also: *In re Tenenbaum*, 918 A.2d 1109 (Del. 2007); *In re Johnson*, 319 Mont. 188 (2004)].

(f) Failure to Cooperate. If a subpoena is issued due to an attorney's failure to cooperate, the minimum sanction is an Informal Admonition in the absence of substantial mitigating circumstances showing a lack of fault on the attorney's part.

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

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

