

RE: Proposal to Amend Rules 2.3, 2.4, 2.6 and 2.10 of the Rules of the Supreme Court of the State of Hawai‘i

PROCESSING OF COMPLAINTS AGAINST ATTORNEYS

The Supreme Court of Hawai‘i seeks public comment regarding proposed amendments to Rules 2.3, 2.4, 2.6 and 2.10 of the Rules of the Supreme Court of the State of Hawai‘i to: (1) establish a probation program for certain lawyer misconduct; (2) allow dismissal of complaints that are contradicted by readily available evidence without first providing the accused attorney the opportunity to respond to the allegations; (3) allow an assigned disciplinary board member, upon good cause shown, to authorize the stay or abatement of the processing of a complaint that is substantially similar to the material allegations of pending criminal or civil litigation, where formal disciplinary proceedings have not commenced; and (4) make various housekeeping amendments.

The Ramseyer version of the proposed rule amendments are attached. The proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than Friday, November 1, 2024** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by email to pao@courts.hawaii.gov or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(Deleted material is bracketed and stricken; new material is underlined.)

Rule 2. DISCIPLINARY RULES.

2.3. Types of discipline.

(a) Discipline may consist of:

- (1) Disbarment by the supreme court; or
- (2) Suspension by the supreme court for a period not exceeding five years; or
- (3) Public censure by the supreme court; or
- (4) Public reprimand by the Disciplinary Board with the consent of the ~~[respondent]~~Subject Attorney and Disciplinary Counsel; or
- (5) Private reprimand by the Disciplinary Board with the consent of the ~~[respondent]~~Subject Attorney and Disciplinary Counsel; or
- (6) Private informal admonition by Disciplinary Counsel or Disciplinary Board.

A public or private reprimand, or a private informal admonition, may also be imposed directly by the supreme court in any disciplinary matter submitted to the court by the Disciplinary Board, without requiring consent of the parties.

(b) Where a ~~[respondent]~~Subject Attorney has, with the written concurrence of the Director of the Attorneys and Judges Assistance Program, proposed a program of monitoring of the ~~[respondent]~~Subject Attorney's efforts toward rehabilitation from "substance abuse" (as that term is defined in Rule 16.1(a) of these Rules), the supreme court or the Disciplinary Board may impose such a monitoring program. The monitoring program, which shall in all cases be supervised by the Director of the Attorneys and Judges Assistance Program, may be in lieu of or in addition to a disciplinary sanction. The duration and conditions of monitoring shall be stated in the final order issued by the supreme court or the Disciplinary Board. Violation of any conditions shall result in the imposition of disciplinary sanctions, but only to the extent set forth in the order establishing the monitoring program.

(c) Restitution and/or payment of costs (exclusive of attorney's fees) may also be ordered by the supreme court or by the Disciplinary Board. Disciplinary Counsel shall file its verified bill of costs within 60 days after imposition of discipline.

(d) As a condition of reinstatement following suspension or disbarment or as a condition in connection with the imposition of any lesser discipline, the Disciplinary Board or the supreme court may require a ~~[respondent]~~Subject Attorney, at the ~~[respondent]~~Subject Attorney's expense, to successfully complete

- (~~i~~1) the bar examination or some portion of it,
- (~~ii~~2) seminars or classes in particular subjects of the law,
- (~~iii~~3) a program specifically designated by the Disciplinary Board or the supreme court to meet some deficiency in the attorney's understanding of the law or the practice of it,
- (~~iv~~4) a practice management audit, and/or
- (~~v~~5) a trust account audit.

In addition, the Disciplinary Board or the supreme court may order the return to the client of all unearned fees or funds and unused deposits against future costs. The Disciplinary Board may consult with the Hawai'i State Bar or others to find or develop such seminars, classes, and programs.

(e) Probation. Any level of discipline under subsection (a) of this Rule, except for subsection (a)(1), may be stayed in whole or in part during a period of probation as follows:

(1) Discipline imposed by the supreme court may not be stayed unless ordered by the supreme court.

(2) Probation shall be imposed for a specified period not in excess of 4 years; however, a probation term of less than 4 years may be renewed for an additional term, provided that the total probation period shall not exceed 4 years.

(3) Probation may be imposed only where there is little likelihood that the Subject Attorney will harm the public during the period of probation and the conditions of probation can be adequately supervised.

(4) The conditions of probation shall be stated in writing and shall be specific, understandable, and enforceable.

(5) Disciplinary Counsel shall be responsible for supervising the Subject Attorney during the probationary period.

(6) Disciplinary Counsel shall report material violations of the conditions of probation to the Chairperson of the Disciplinary Board by filing a notice of noncompliance with the Disciplinary Board and serving the Subject Attorney with a copy of the notice. The notice of noncompliance shall include a separate declaration upon personal knowledge stating sufficient facts to support the allegation of material violations of the conditions of probation. The Subject Attorney may file a response to the notice within ten days after service of the notice.

(7) After the time provided for the Subject Attorney's response, the Chairperson of the Disciplinary Board may either dismiss the notice or set a procedure for presentation of the matter to the Disciplinary Board. If the Disciplinary Board determines by a preponderance of the evidence that the Subject Attorney violated a condition of probation, the Disciplinary Board may impose on the Subject Attorney all or any remaining portion of the sanction that was stayed by the conditions of probation.

(8) Where a violation results in the imposition of any stayed disciplinary sanction under subsections (a)(2) or (a)(3) of this Rule, the findings and report of the Disciplinary Board shall be submitted to the supreme court, for determination in accord with section 2.7(d) of these Rules.

(9) At the end of the probation term, Disciplinary Counsel shall file with the Disciplinary Board a notice regarding the Subject Attorney's completion or non-completion of probation. In those matters where discipline was imposed by the supreme court, the Disciplinary Board shall submit a report with recommendations to the supreme court regarding any appropriate further action.

2.4. Disciplinary board.

(e) The Disciplinary Board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

(2) To employ, supervise, and terminate a Chief Disciplinary Counsel, [~~hereinafter Chief Counsel,~~] a Deputy Chief Disciplinary Counsel, [~~Assistant~~]Deputy Disciplinary Counsel, and staff employees, and to appoint volunteers to assist the Disciplinary Board in the exercise of its duties. The Disciplinary Board may delegate to Chief Disciplinary Counsel the authority to employ and supervise the Deputy Chief Disciplinary Counsel and [~~Assistant~~]Deputy Disciplinary Counsel, to employ, supervise and terminate staff, and to appoint volunteers.

(3) To appoint Special Assistant Disciplinary Counsel when Chief Disciplinary Counsel and all full time [~~Assistant~~]Deputy Disciplinary Counsel are disqualified.

2.6. Disciplinary counsel.

(a) **Private practice not permitted.** Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and salaried Deputy Disciplinary Counsel shall not engage in private practice, except that:

(1) The Disciplinary Board may agree to a reasonable period of transition after appointment; and

(2) Chief Disciplinary Counsel, Deputy Chief Disciplinary Counsel, and salaried Deputy Disciplinary Counsel may provide *pro bono* services consistent with Rule 6.1 of the Hawai'i Rules of Professional Conduct, subject to restrictions imposed by the Disciplinary Board.

(b) **Powers and duties of Chief Disciplinary Counsel.** Chief Disciplinary Counsel shall have the power and duty:

(1) To investigate all matters involving alleged misconduct called to the Chief Disciplinary Counsel's attention whether by complaint or otherwise.

(2) To dispose, subject to review by members of the Disciplinary Board assigned by the Chairperson, of all matters involving alleged misconduct by dismissal, private informal admonition, referral to a minor misconduct or assistance program, or the institution of formal disciplinary proceedings before a hearing committee or officer. Except in matters

requiring dismissal because the complaint is frivolous on its face, ~~[or]~~ falls outside the Disciplinary Board's jurisdiction, or is contradicted by other readily available evidence, no disposition shall be recommended or undertaken by Disciplinary Counsel until the ~~[accused attorney]~~Subject Attorney shall have been afforded the opportunity to state a position with respect to the allegations.

(3) To file with the supreme court certificates of conviction of attorneys for crimes.

(4) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees or officer, the Disciplinary Board and the supreme court.

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(9) To perform such other duties and provide such reports as the Disciplinary Board shall direct.

(10) To supervise any Subject Attorney on probation, including submission of reports to the supreme court or Disciplinary Board, and, where appropriate, to prosecute probation violation proceedings.

(c) Delegation. Chief Disciplinary Counsel may delegate performance of the duties set out in sections (b)(1) through (b)(~~9~~)10) to Deputy Chief Disciplinary Counsel, ~~[Assistant]~~ Deputy Disciplinary Counsel, and staff.

2.10. Matters involving related pending civil or criminal litigation.

Processing of complaints shall not be ~~[deferred]~~ stayed or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized, for good cause shown, by the assigned member of the Disciplinary Board designated by the Chairperson to review recommendations of Disciplinary Counsel, or, if formal disciplinary proceedings have commenced, by the Disciplinary Board in its discretion~~[, for good cause shown]~~.