

Electronically Filed
Supreme Court
SCAD-23-0000396
21-JUL-2025
08:05 AM
Dkt. 44 OPC

IN THE SUPREME COURT OF THE STATE OF HAWAII

---o0o---

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,

vs.

MARK R. ZENGER,
Respondent.

SCAD-23-0000396

ORIGINAL PROCEEDING
(CASE NO. DB 19-9001)

July 21, 2025

OPINION BY RECKTENWALD, C.J., CONCURRING IN PART

I agree with the majority's conclusion that, based on the record in this case and the accepted findings of fact by the Hearing Officer, Respondent Mark R. Zenger's conduct during a February 28, 2018 chambers conference did not constitute a violation of Hawai'i Rules of Professional Conduct Rules 3.5(c) or 4.4(a), and that the disciplinary proceeding should be dismissed.

Although Respondent's conduct in chambers did not constitute a violation of the Rules, I write separately to emphasize the foundational role of civility in the legal profession in Hawai'i. To his credit, Respondent acknowledged he could have used more appropriate words to express his disagreement with his opposing counsel during the chambers conference, and expressed remorse for using profanity.

The line between zealous advocacy and personal conflict between counsel can sometimes be hard to recognize. Lawyers must make tough calls in the heat of the moment, and the context of each situation matters. That said, it is clear that civility should be a touchstone of how Hawai'i lawyers approach the practice of law.

To cite a few examples, every new attorney must subscribe to an oath that provides: "I will conduct myself with dignity and civility towards . . . my fellow professionals." Rules of the Supreme Court of Hawai'i Rule 1.5(c). The preamble to the Rules of Professional Conduct states that "[a] lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials." And, in 2005, this court established the Hawai'i Supreme Court Commission on Professionalism. In creating the Commission, this court cited findings of a report from the Conference of Chief Justices of "a significant decline in

professionalism in the bar and a consequent drop in the public's confidence in the profession and the justice system in general." These examples do not merely reflect aspirational goals, but rather illustrate that civility is essential to the legal profession in Hawai'i.

For the foregoing reasons, I concur in Parts I and II of the majority opinion, as well as Part III to the extent it addresses the applicability of the Guidelines for Professional Courtesy and Civility. Respectfully, I do not concur in the remainder of Part III to the extent it addresses Respondent's reputation. Given the Court's conclusion that ODC's amended petition should be dismissed, that issue is not relevant.

/s/ Mark E. Recktenwald

