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SCRU-11-0000068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

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ORDER AMENDING RULE 2 OF THE RULES OF THE SUPREME  
COURT OF THE STATE OF HAWAI'I

(By: McKenna, Acting C.J., Eddins, Ginoza, and Devens, JJ., and  
Intermediate Court of Appeals Chief Judge Nakasone,  
assigned by reason of vacancy)

IT IS HEREBY ORDERED that Rule 2 of the Rules of the  
Supreme Court of the State of Hawai'i is amended, effective July  
1, 2026, as follows (deleted material is bracketed and stricken;  
new material is underscored):

**Rule 2. DISCIPLINARY RULES.**

**2.1. Jurisdiction.**

Any attorney admitted, specially admitted, or granted limited  
admission, under any provision of Rule 1.1, *et seq.* of these Rules, to  
practice law in this state, and any attorney licensed to practice law by the  
highest court of a state or territory of the United States or the District of  
Columbia, but not admitted in this state, who practices law or renders or  
offers to render any legal services in this state is subject to the  
disciplinary jurisdiction of the supreme court and the Disciplinary Board  
hereinafter established.

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**2.2. Grounds for discipline.**

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(b) Acts or omissions by an attorney which violate the Hawai'i Rules of Professional Conduct shall constitute misconduct and shall be ground for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. Conviction of a crime shall similarly be ground for discipline as set forth in Rule 2.13 of these 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 and Disciplinary Counsel; or
- (5) Private reprimand by the Disciplinary Board with the consent of the respondent and Disciplinary Counsel; or
- (6) Private informal admonition by Disciplinary Counsel or the 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 has, with the written concurrence of the Director of the Attorneys and Judges Assistance Program, proposed a program of monitoring of the respondent'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, at the respondent's expense, to successfully complete

- (~~1~~) the bar examination or some portion of it,
- (~~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 disbarment imposed pursuant to subsection (a)(1) of this Rule, may be stayed in whole or in part during a period of probation as follows:

(1) STAY OF SUPREME COURT DISCIPLINE. Discipline imposed by the supreme court may not be stayed unless ordered by the supreme court.

(2) PROBATION TERM. Probation shall be imposed for a specified period not to exceed 4 years. This 4-year limit includes the original term and any subsequent extensions; however, any period during which the probationary term is tolled under subsection (e)(6) of this Rule shall be excluded from the calculation of the 4-year limit.

A probation term of less than 4 years may be extended by the Disciplinary Board or the supreme court upon a finding that there is a continued need for supervision. The procedure for obtaining an extension is as follows:

(A) Before the expiration of the current probation term, Disciplinary Counsel or the respondent shall file a motion or written agreement for an extension with the Disciplinary Board and serve the other party with a copy of the motion or agreement.

(B) A party may file an objection to the motion within ten days after service of the motion.

(C) The Disciplinary Board shall hear the motion promptly. The Disciplinary Board may approve an extension of probation if it determines by a preponderance of the evidence that there is a continued need for supervision, including when the respondent has violated a condition of probation, consistent with subsections (e)(7) and (e)(8) of this Rule.

(D) If the supreme court imposed the probation, the Disciplinary Board shall submit its findings and recommendation to the supreme court in accordance with section 2.7(d) of these Rules. Probation imposed by the supreme court may be extended only by supreme court order.

(3) PROGRAM REQUIREMENTS. Probation may be imposed only where the record supports the conclusion that there is little likelihood that the respondent will harm the public during the period of probation and the conditions of probation can be adequately supervised.

(4) CONDITIONS OF PROBATION. The conditions of probation shall be stated in writing and should provide for periodic review of the respondent, provide means to supervise the respondent's progress, and

require the respondent to cooperate with Disciplinary Counsel. Any order imposing probation shall include a provision requiring the respondent to refrain from further violations of the Hawai'i Rules of Professional Conduct during the probationary period.

(5) SUPERVISION. Disciplinary Counsel shall be responsible for supervising the respondent during the probationary period.

(6) NOTICE OF MATERIAL VIOLATION OF PROBATION. 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 respondent with a copy of the notice. The filing of the notice of noncompliance shall toll the probationary period until the matter is fully resolved, including any review by the supreme court under subsection (e)(8) of this Rule. During the pendency of the matter, the Disciplinary Board may require the respondent to adhere to existing conditions of probation. 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 respondent may file a response to the notice within ten days after service of the notice.

(7) NONCOMPLIANCE HEARING. After the time provided for the respondent'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, in an expeditious manner, based upon the record. A hearing before the Disciplinary Board may be waived upon written agreement of the parties.

If the Disciplinary Board determines by a preponderance of the evidence that the respondent violated a condition of probation, the Disciplinary Board may impose on the respondent all or any portion of the sanction that was stayed by the conditions of probation, or may extend the probation term consistent with subsection (e)(2) of this Rule, except as provided in subsection (e)(8) of this Rule.

(8) REFERRAL TO THE SUPREME COURT. Where a violation of a condition of probation may result in the imposition of any disciplinary sanction stayed by the supreme court or an extension of a probation term imposed by the supreme court, the findings and report of the Disciplinary Board shall be submitted to the supreme court for determination in accordance with section 2.7(d) of these Rules.

(9) FINAL REPORT; DISCHARGE. Within 30 days after the end of the probation term, Disciplinary Counsel shall file with the Disciplinary Board a notice regarding the respondent's completion or non-compliance. During this 30-day period, Disciplinary Counsel may file a notice of non-compliance under subsection (e)(6) of this Rule for any material violation occurring during the probation term. The filing of a notice of non-compliance during this 30-day period shall stay the discharge of the disciplinary sanction and toll the probation term until the matter is fully resolved under subsections (e)(7) and (e)(8) of this Rule.

If Disciplinary Counsel fails to file a notice regarding completion or a notice of non-compliance within 30 days after the end of the

probation term, the probation shall be deemed successfully completed. Upon the successful completion of probation imposed by the Disciplinary Board, the stayed portion of the disciplinary sanction shall be deemed discharged without further order. For discipline originally imposed by the supreme court, the Disciplinary Board shall file a certificate of successful completion with the supreme court to effectuate the discharge of the stayed sanction.

The discharge of a stayed sanction shall not vacate the underlying finding of misconduct, which shall remain a matter of record and may be considered as prior disciplinary history in any future proceeding.

(10) INDEPENDENT DISCIPLINARY ACTION; VIOLATIONS OF PROBATION. The procedures set forth in this subsection (e)(7) and (e)(8) to vacate a stay and impose the previously ordered disciplinary sanction against a respondent based on non-compliance with the terms of probation shall be in addition to, and not in lieu of, the ordinary disciplinary process. Nothing in this Rule shall prevent Disciplinary Counsel from investigating and prosecuting the conduct underlying a notice of noncompliance as a separate disciplinary matter. The imposition of a stayed sanction for a probation violation shall not bar, under any theory of res judicata or collateral estoppel, the imposition of further discipline for the same conduct in a new proceeding.

#### **2.4. Disciplinary ~~b~~Board.**

**(a)** The supreme court shall appoint a board to be known as the "Disciplinary Board of the Hawai'i Supreme Court" (hereinafter referred to as the "Disciplinary Board") that shall consist of eighteen members, each of whom shall be nominated and appointed separately. At least one-third of the members shall not be lawyers. To the extent possible, membership shall include at least one person from each of the four counties. All appointments shall be made from a list of nominees submitted by the Nominating Committee of the Hawai'i Supreme Court. The Disciplinary Board shall elect from among its members, a Chairperson, a Vice-Chairperson, a secretary, and a treasurer.

**(b)** All members shall be appointed to staggered three-year terms; however, to maintain a Disciplinary Board with staggered terms, initial appointments may be for less than three years. The Disciplinary Board shall act only with the concurrence of seven or more members. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

**(c)** Disciplinary Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case, or the orderly operation of the Disciplinary Board, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary. Each ad hoc member shall fulfill all the responsibilities of a Disciplinary Board member.

(d) Periodically, the Chairperson shall designate at least two Disciplinary Board members to review the proposed decisions of the Disciplinary Counsel, as mentioned in subsection 2.7 hereof.

(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:

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(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.

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(5) To approve assignments made annually by the Chairperson for rotation of members of the Disciplinary Board to review for stated periods all recommended dispositions by Disciplinary Counsel and to authorize changes in such assignments from time to time necessitated by unforeseen circumstances.

(6) To adopt rules of procedure governing the Disciplinary Board and hearing committees and officers which are not inconsistent with these rules.

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(8)(i) To develop an annual budget for operating the Office of Disciplinary Counsel and performing the functions of the Disciplinary Board, to develop appropriate financial policies for managing of all funds received by the Disciplinary Board, and to propose an annual fee;

(ii) to submit, no later than September 15 each year, the developed budget, financial policies, and fee structure to the Hawai'i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai'i State Bar prior to submission to the supreme court;

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(9) To receive from the Hawai'i State Bar all funds collected by the Hawai'i State Bar for the Disciplinary Board, and to have exclusive control and responsibility over all financial transactions; and to develop and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit as directed by the supreme court.

(10) To retain, as needed, private counsel to assist the Disciplinary Board in the performance of its duties.

(11) To establish committees to assist the Disciplinary Board in the performance of its duties.

**2.5. Hearing committees.**

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(b) Hearing committees and officers shall have the power to conduct hearings in formal disciplinary proceedings and on petitions for reinstatement of disbarred or suspended attorneys, upon assignment by the Chairperson of the Disciplinary Board, and to submit their findings and recommendations, together with the record of the proceeding, to the Disciplinary Board. Hearing committee members and officers may also serve as trustees under Rule 2.20 of these Rules or may, upon appointment by the Chairperson of the Disciplinary Board, assist said trustees in carrying out their duties.

**2.6. Disciplinary [e]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, [ø] 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 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 respondent 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 subsections (b)(1) through (b)(~~9~~10) of this Rule to Deputy Chief Disciplinary Counsel, [~~Assistant~~]Deputy Disciplinary Counsel, and staff.

**2.7. Procedure.**

**(a) Investigation.** All investigations, whether upon complaint or otherwise, shall be conducted under the supervision of Disciplinary Counsel. Each investigation shall be confined to the facts of the grievance and matters reasonably related thereto that could be violations of the Hawai'i Rules of Professional Conduct or other Rules of the Supreme Court that regulate the practice of law. Upon motion, an attorney subject to an investigation may seek protective orders in the first instance from the Disciplinary Board and, if denied, then, within 10 days thereafter from the supreme court. Upon the conclusion of an investigation, Disciplinary Counsel shall recommend dismissal, informal admonition of the attorney concerned, the institution of non-disciplinary proceedings for minor misconduct, or the institution of formal disciplinary proceedings before a hearing committee or officer. Disciplinary Counsel's recommendation shall be reviewed by one of the two members of the Disciplinary Board assigned for that purpose. If the initial reviewing member of the Disciplinary Board approves Disciplinary Counsel's recommendation, it shall be implemented. If the reviewing member of the Disciplinary Board disapproves Disciplinary Counsel's recommendation, Disciplinary Counsel may request further review by the other reviewing member of the Disciplinary Board. In the event of such second review of Disciplinary Counsel's recommendation, the decision by the second reviewing member of the Disciplinary Board shall be final. The member or members of the Disciplinary Board who review Disciplinary Counsel's recommendation shall be disqualified in any formal disciplinary proceedings in relation to the same alleged misconduct.

**(b) Minor misconduct.**

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(3) Subject to the provisions of Rule 2.7(a) of this Rule, Disciplinary Counsel shall, in Disciplinary Counsel's sole discretion, exclusively determine whether a matter constitutes minor misconduct. In that event, Disciplinary Counsel may reach agreement with the respondent to submit the matter to non-disciplinary proceedings. Such proceedings may consist of fee arbitration, arbitration, mediation, lawyer practice assistance, substance abuse recovery programs, psychological counseling, mentoring, or any other non-disciplinary proceedings authorized by the supreme court. Disciplinary Counsel shall then refer the matter to the agency or agencies authorized by the supreme court to conduct the proceedings.

(4) If the respondent enters into an agreement for referral to a minor misconduct program established by the Hawai'i State Bar and enters into a mentoring relationship, all records and information maintained by the mentor relating to the minor misconduct of the respondent shall be deemed confidential and shall not be disclosed to the Disciplinary Counsel, the Disciplinary Board, the supreme court or any other person and shall not be subject to discovery or subpoena unless such confidentiality is waived in writing by the respondent; provided, however, that the mentor may compile and disclose to Disciplinary Counsel a final report summarizing the mentoring program and the completion thereof to the satisfaction of the mentor. The mentor and the respondent have a privilege to refuse to disclose information shared or provided between the mentor and the respondent. The limitations on disclosure set forth in this section will not apply to information relating to the respondent's failure to cooperate with the mentoring program, or with a respondent's unsuccessful completion of a mentoring program.

(5) If Disciplinary Counsel shall fail to reach agreement with the respondent to submit the matter of non-disciplinary proceedings, Disciplinary Counsel may undertake or resume disciplinary proceedings.

(6) If the respondent shall fail to comply with the terms of the agreement, Disciplinary Counsel may undertake or resume disciplinary proceedings.

(7) If the respondent shall fulfill the terms of the agreement, Disciplinary Counsel shall dismiss the disciplinary proceedings.

**(c) Formal hearing.** Formal disciplinary proceedings shall be instituted by Disciplinary Counsel by filing with the Disciplinary Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent in accordance with Rule 2.11(a) of these Rules. Notwithstanding Rule 2.22 of these Rules, if at the time the petition is served, the respondent is engaged in the act of the practice of law as a part of a firm, partnership, corporation or governmental entity or other group, Disciplinary Counsel shall provide a notice to the respondent's employer [~~of the fact~~] that formal disciplinary proceedings have been filed with the Disciplinary Board. The respondent shall serve the respondent's answer upon Disciplinary Counsel and file the original with the Disciplinary Board within 20 days after the service of the petition, unless such time is extended by the Disciplinary Board Chairperson. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer or upon failure to answer, the matter shall, unless the provisions of subsection (e) of this Rule [~~below~~] apply, be assigned by the Chairperson to a hearing committee or officer. The hearing committee or officer receiving the assignment shall serve a notice of hearing upon Disciplinary Counsel and the respondent, or the respondent's counsel, stating the date, time, and place of the hearing. At

every hearing wherein factual issues are to be resolved, the respondent shall have a full opportunity to confront and cross-examine such witnesses presented by Disciplinary Counsel and to present evidence on the respondent's own behalf. Absent good cause warranting the use of a court reporter, Disciplinary Counsel shall electronically record disciplinary hearings for transcription at a later time, if appropriate. The hearing committee or officer shall, in every case, submit a report containing findings and recommendations, together with a record of the proceedings, including a transcription of the audio recording of the hearing, to the Disciplinary Board within 30 days after the conclusion of the hearing unless such time is extended by the Disciplinary Board Chairperson for no more than 30 days for good cause shown. The findings of the hearing committee or officer shall be supported by clear and convincing evidence. The hearing committee or officer shall not be bound by the formal rules of evidence, but shall admit only trustworthy evidence. The hearing committee or officer shall not rely upon any evidence outside the formal record in reaching a decision.

**(d) Review by Disciplinary Board and Supreme Court.** Upon receipt of a report from a hearing committee or officer, the Disciplinary Board will not entertain briefs or oral argument except:

- (1) within the Disciplinary Board Chairperson's discretion upon application of Disciplinary Counsel or the respondent (submitted within 10 days after service of the report of the hearing committee or officer); or
- (2) upon a vote of a majority of the Disciplinary Board.

If such application is granted or vote occurs, the Disciplinary Board Chairperson shall set the dates for submission of briefs and for any oral argument before the Disciplinary Board. After reviewing the report of the hearing committee or officer, the Disciplinary Board shall promptly either affirm or modify the report of the hearing committee or officer, remand the matter for further proceedings before the hearing committee or officer, or dismiss the petition with the consent of Disciplinary Counsel, provided that no such consent shall be required where the hearing committee or officer recommended dismissal of the petition. In the event the Disciplinary Board determines that the proceeding shall be concluded by informal admonition or private or public reprimand, such admonition or reprimand shall be imposed in accordance with procedures established by the Disciplinary Board.

Unless the Disciplinary Board dismisses the petition with any required consent of Disciplinary Counsel, remands the petition, or concludes the matter by informal admonition or private or public reprimand, the Disciplinary Board shall promptly submit a report containing its findings and recommendations, together with the entire record, to the supreme court. After the filing of such report, a copy thereof shall be served on the parties in accordance with Rule 2.11(b) of these Rules. The supreme court will not entertain briefs or oral argument except:

- (1) within its discretion upon application of the respondent or Disciplinary Counsel (submitted within 10 days after service of the Disciplinary Board's report); or

(2) upon request of the supreme court. If such application is granted or request is made, the supreme court shall set the dates for submission of briefs and for any oral argument before the supreme court. In its discretion, the supreme court may in all disciplinary cases issue and publish written opinions or by per curiam order adopt and publish the findings and conclusions contained in the written report of the Disciplinary Board.

(e) **Elimination or suspension of hearing proceedings.** All proceedings before the hearing committee or officer shall be eliminated or suspended

(1) where the respondent has filed no answer (and the charges have thus been deemed admitted) because, after due and diligent effort by Disciplinary Counsel, the respondent cannot be located for personal service and does not receive registered or certified mail at any of the respondent's addresses last known to Disciplinary Counsel; or

(2) where Disciplinary Counsel and the respondent at any time subsequent to the filing of a petition file with the Disciplinary Board a stipulation setting forth an admission by the respondent of the facts deemed relevant to a determination of the matter, the disciplinary violations which serve as grounds for discipline, and an agreement as to the recommended form of discipline which should be imposed upon the respondent based upon the admitted violations.

The entire record in the case shall thereupon be transmitted directly to the Disciplinary Board for review in accordance with subsection (d) of this Rule [above]. The parties may request that the record be supplemented by documentary exhibits. In any event, the Disciplinary Board may accept a request by the parties that the submission of briefs and/or oral argument before the Disciplinary Board be waived. In the case of a stipulation filed by the parties, neither the Disciplinary Board nor the supreme court shall be bound to accept the parties' stipulated factual and legal agreements or recommended disposition, and the Disciplinary Board or the supreme court may either decide the matter based upon the factual admissions set forth in the parties' stipulation or may remand the matter for further proceedings before a hearing committee as outlined in subsection (c) of this Rule [above].

## **2.8. Immunity.**

Complaints submitted to the Disciplinary Board or Disciplinary Counsel or testimony given with respect thereto or trustee proceedings conducted pursuant to Rule 2.20 of these Rules shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of the Disciplinary Board, members of the hearing committees, hearing officers, Disciplinary Counsel, counsel to the Disciplinary Board, staff, volunteers, experts appointed pursuant to Rule 2.19 of these Rules, trustees and assistants appointed pursuant to Rules 2.20 and 2.5 of these Rules, and mentors appointed pursuant to Rule 2.7(b)(4) of these Rules shall be immune from suit and liability for any conduct in the course of their official duties.

**COMMENT:**

*The purpose of extending immunity to mentors appointed pursuant to Rule 2.7(b)(3)(4) of these Rules is to enhance the ability to attract participants to participate as mentors in minor misconduct programs and to provide to these mentors protections provided to those serving in other capacities under the auspices of the Disciplinary Board.*

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**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~~].

**2.11. Service.**

(a) Service upon the respondent of the petition or order to show cause in any disciplinary, disability, or trustee proceeding shall be made by personal service by any person authorized by the Disciplinary Board Chairperson, except that in the event the respondent cannot be found within the state or has departed therefrom, service shall be made by registered or certified mail at the respondent's address shown in [~~his or her~~] the respondent's registration statement filed pursuant to Rule 17(d) of these Rules or other last known address. Service by mail is complete on mailing.

(b) Service of any other papers or notices required by these rules may be personal or by mail. Personal service includes delivery of the copy to an attorney or a responsible person at the attorney's office. Service by mail at the respondent's address shown in [~~his or her~~] the respondent's registration statement filed pursuant to Rule 17(d) of these Rules or other last known address is complete on mailing, if mailed by postage prepaid First Class mail or other class of mail that is at least as expeditious.

**2.12. Power to subpoena respondents and witnesses; pretrial proceedings.**

Any member of a hearing committee or any hearing officer, in matters before it or them, and Disciplinary Counsel, in matters under investigation by [~~him or her~~] Disciplinary Counsel, may administer oaths and affirmations, and compel by subpoena the attendance of the respondent and witnesses and the production of pertinent books, papers and documents. A respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents before a hearing committee or officer after formal disciplinary

proceedings are instituted. Writs of subpoena shall be issued in blank by the clerk of the supreme court upon application by any member of a hearing committee or any hearing officer, Disciplinary Counsel or the respondent. The supreme court may, upon proper application pursuant to [HRAP] Rule 27 of the Hawai'i Rules of Appellate Procedure, enforce the attendance and testimony of the respondent and may, as set forth in Rule 2.12A of these Rules, immediately suspend the respondent from the practice of law for the failure to comply with any lawful demand of the supreme court, a hearing committee or officer, or Disciplinary Counsel made in connection with any investigation, hearing, or disciplinary proceeding. Upon application pursuant to [HRAP] Rule 27 of the Hawai'i Rules of Appellate Procedure, the supreme court may also enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts.

There shall be no discovery proceedings except upon the order of the Disciplinary Board Chairperson for good cause shown.

At the discretion of the hearing committee or officer, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the officer or the chairperson of the committee or any member of the committee designated by its chairperson.

**2.12A. Failure to cooperate.**

**(a) Grounds for suspension.** An attorney who is the subject of an investigation by Disciplinary Counsel, or who is the subject of a disciplinary proceeding pending before a hearing committee or officer, the Disciplinary Board, or the supreme court, may be suspended from the practice of law, pending consideration of the charges against the attorney, upon a finding that the attorney is guilty of a failure to cooperate with the investigation or disciplinary proceeding. Such a finding shall be based upon the attorney's default in responding to the petition or notice filed by Disciplinary Counsel, or the attorney's failure to submit a written response to pending allegations of professional misconduct, or to comply with any lawful demand of the supreme court, the hearing committees, hearing officers, or Disciplinary Counsel made in connection with any investigation, hearing, or disciplinary proceeding, including failure to comply with a subpoena issued under Rule 2.12 of these Rules.

**(b) Petition; order to appear; findings.** Upon the filing with the supreme court of a petition approved by the Disciplinary Board Chairperson or ~~[his or her]~~ the Chairperson's designee on the Disciplinary Board, an order shall be issued directing the attorney to appear within ten days of the service of the order, and inform the supreme court as to why the attorney should not be immediately suspended. Service upon the attorney shall be made pursuant to Rule 2.11(a) of these Rules. The suspension shall be made upon the supreme court's finding that the attorney has failed to cooperate, as outlined in subsection (a) [above] of this Rule. The supreme court shall briefly state its reasons for its order of

suspension, which shall be effective immediately and until further order of the supreme court.

(c) **Application to defend.** In all cases where the petition described in subsection (b) [above] of this Rule is served in any manner other than personally, and the attorney so served does not appear, an application may be made by such attorney to the chief justice at any time within one year after the rendition of the final order of suspension, and upon good cause shown and upon such terms as may be deemed just by the chief justice, such attorney shall be allowed to defend ~~himself~~ themselves against such charges.

(d) **Reinstatement.** An attorney suspended under this Rule 2.12A may move for reinstatement. The motion shall be supported by proof respondent cured the failures to cooperate alleged in the petition. If conventionally filed, a copy of the motion for reinstatement shall be served upon Disciplinary Counsel at or before the time of filing. Disciplinary Counsel shall file a response to the motion within 20 days after the motion for reinstatement was filed. Disciplinary Counsel's response shall verify whether respondent has cured the allegations of non-cooperation.

**2.13. Attorneys convicted of crimes.**

(a) Upon learning an attorney has been found guilty of a crime that:

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(3) involves dishonesty or false statement, Disciplinary Counsel shall obtain proof of the finding of guilt and file it with the Disciplinary Board and with the clerk of the supreme court. For purposes of this Rule, a finding of guilt is a verdict or judgment of guilty, a guilty plea, or a no contest plea. Deferred acceptance of a plea, a sentence suspension, or a conditional discharge does not change the definition of guilt for purposes of this Rule.

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(d) When proof of a finding of guilt is filed with the supreme court, the supreme court shall refer the matter to the Disciplinary Board for institution of a formal proceeding in which the sole issue to be determined shall be the discipline to be imposed. Such a disciplinary proceeding shall not be brought to hearing until the conviction is final, unless the respondent requests that the proceeding continue. For purposes of this Rule, a conviction is deemed final when:

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(f) If an attorney suspended solely under the provisions of ~~paragraph~~ subsection (b) [above] of this Rule demonstrates to the supreme court that the underlying finding of guilt has been reversed or vacated, the order for interim suspension shall be vacated and, upon payment of all required registration fees, the attorney may be placed on active status. Vacation of the interim suspension will not automatically prohibit or terminate any formal proceeding against the attorney and disposition of any formal proceeding against the attorney must be on the basis of the available evidence other than the finding of guilt.

**2.14. Resignation in lieu of discipline or disbarment by consent of attorneys under disciplinary investigation or prosecution.**

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of grounds for the attorney's discipline may resign in lieu of discipline or consent to disbarment, but only by delivering to the Disciplinary Board Chairperson an affidavit stating that the attorney desires to resign in lieu of discipline or consent to disbarment and that:

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(b) Upon receipt of the required affidavit, the Disciplinary Board shall file with the supreme court and the supreme court shall enter an order granting the request to resign in lieu of discipline or disbarment of the attorney on consent.

(c) The order granting the request to resign in lieu of discipline or disbarment of the attorney on consent shall be a matter of public record. The affidavit required under the provisions of subsection (a) of this Rule ~~[above]~~ shall be a matter of public record but shall not be used in any other proceeding except upon order of the supreme court or as otherwise allowed by these rules.

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**2.15. Reciprocal Action.**

(a) An attorney who has, in any other jurisdiction:

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(4) been placed on interim suspension due to misconduct, incapacity, incompetence, or disability; shall notify Disciplinary Counsel promptly of the foreign action. Upon notification of the foreign action, Disciplinary Counsel shall obtain a certified copy of the order and file it with the supreme court.

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(c) Upon the expiration of 30 days from service of the notice issued pursuant to ~~[the provisions of]~~ subsection (b) [above] ~~of this Rule~~, the supreme court shall enter an order imposing the same or substantially equivalent discipline, or restrictions or conditions upon the attorney's license to practice law in this jurisdiction, unless Disciplinary Counsel or the attorney demonstrates, or it clearly appears upon the face of the other jurisdiction's record, that:

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(d) In all other respects, a final action in another jurisdiction, as set out in subsection (a) of this Rule, shall establish conclusively the factual basis for the same or substantially equivalent discipline, or restrictions or conditions on the attorney's license to practice law in this state.

**2.16. Disbarred or suspended attorneys.**

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(d) Within 10 days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the supreme court an affidavit showing:

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(3) that the attorney has served a copy of such affidavit upon Disciplinary Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to the attorney.

(e) The Disciplinary Board shall cause a notice of the suspension or disbarment to be published on the Disciplinary Board's or the Judiciary's public website or in a newspaper of general circulation in the judicial circuit in which the disciplined attorney practiced and shall further cause a notice of reinstatement under Rule 2.17 of these Rules to be similarly published.

(f) The Disciplinary Board or the court shall promptly transmit by electronic means a copy of the certified order of suspension or disbarment to all judges of the State of Hawai'i, and the administrative judge of each judicial circuit shall make such further order as the administrative judge deems necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

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**2.17. Reinstatement.**

(a) **Resumption of Practice.** No suspended or disbarred attorney may resume practice until reinstated by order of the supreme court except as provided in Rule 17(d) of these Rules.

(b) **Time to Apply.**

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(2) ATTORNEY SUSPENDED 1 YEAR OR LESS. An attorney suspended from practice for one year or less who has complied with the suspension order and has paid all required fees shall be reinstated by order of the supreme court at the end of the period of suspension by filing with the supreme court and serving upon Disciplinary Counsel an affidavit to that effect.

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(4) BURDEN OF PROOF; ELIGIBILITY. A disbarred attorney or an attorney suspended from practice for more than one year shall not be reinstated unless ~~he or she~~ that attorney can show proof of the following by clear and convincing evidence: rehabilitation, fitness to practice law, competence and compliance with all applicable disciplinary or disability orders and rules, and compliance with any other requirements imposed by the supreme court, which may include the successful completion of requirements for passing the bar examination.

(5) EVIDENCE COSTS, LAWYERS' FUND PAID. No suspended or disbarred attorney shall be eligible for reinstatement except upon a showing that ~~he or she~~ that attorney has reimbursed both the Disciplinary Board for all costs ordered including those incurred under

[RSCH] Rule 2.20 of these Rules, if any, and the Lawyers' Fund for Client Protection for monies paid out on account of the attorney's conduct, together with interest at the Hawai'i statutory judgment rate.

(6) REQUIRED EVIDENCE. A petitioner under ~~[parts]~~ subsections (b)(1) and (b)(3) of this Rule 2.17 shall support the petition with the following information, submitted under seal:

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(H) a statement verifying that restitution, or reimbursement of costs, including to the client protection fund, if appropriate, has been made and in what amount(s);

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(L) written authorization for the ~~[ODC]~~ Office of Disciplinary Counsel to secure any financial records relating to those accounts, safety deposit boxes, deposits or loans; and

(M) copies of petitioner's state and federal income tax returns for the three years preceding the period of discipline and during the period of discipline along with written authorization for the ~~[ODC]~~ Office of Disciplinary Counsel to obtain certified copies of the originals.

(7) SUBSEQUENT PETITIONS. If a petition for reinstatement is denied, the petitioner may reapply for reinstatement no earlier than 1 year after entry of the supreme court's order denying reinstatement.

**(c) Petition the disciplinary board; serve disciplinary counsel; investigation; hearing; reports.** Petitions for reinstatement by a disbarred attorney or an attorney suspended for more than one year shall be filed with the Disciplinary Board and served upon Disciplinary Counsel. Upon receipt of the petition, the Disciplinary Board shall, following a reasonable investigation by counsel of the attorney's fitness for reinstatement, refer the petition to a hearing committee or officer. The investigation shall be completed within 180 days unless the Disciplinary Board Chairperson, upon a showing of good cause, extends the time to complete the investigation. The hearing committee or officer shall promptly schedule a hearing, unless the petitioner requests the matter be heard upon the pleadings and exhibits and Chief Disciplinary Counsel agrees. Petitioner and Chief Disciplinary Counsel may stipulate to facts. Within 30 days after the conclusion of the hearing, the hearing committee or officer shall submit to the Disciplinary Board a report containing its findings and recommendations, together with the record of the proceedings unless such time is extended by the Disciplinary Board Chairperson for no more than 30 days for good cause shown. The Disciplinary Board shall review the report of the hearing committee or officer and the record and shall either:

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**(d) Expenses.** The supreme court shall, absent good cause to the contrary, direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the attorney seeking reinstatement, upon the filing by Disciplinary Counsel of a verified bill of costs within 60 days after final disposition of the petition.

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**2.19. Proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated.**

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(b) Whenever the Disciplinary Board shall petition the supreme court to determine whether an attorney is incapacitated from continuing the practice of law by reason of physical or mental infirmity or illness or because of the use of drugs or intoxicants, the supreme court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the supreme court shall designate. If, upon due consideration of the matter, the supreme court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to inactive status on the ground of such disability for an indefinite period and until the further order of the supreme court.

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(c) If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of the use of drugs or intoxicants, which makes it impossible for the respondent to present an adequate defense, the supreme court thereupon shall enter an interim order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with ~~the provisions of~~ subsection (b) [above] of this Rule.

(d) The Disciplinary Board shall cause a notice of interim or final transfer to inactive status to be published on the Disciplinary Board's or the Judiciary's public website or in a newspaper of general circulation in the judicial circuit in which the disabled attorney practiced and shall further cause a notice of a return to active status to be similarly published.

(e) The Disciplinary Board or the court shall promptly transmit a certified copy of the interim or final order of transfer to inactive status to all judges of the State of Hawai'i and shall request such action under the provisions of Rule 2.20 of these Rules as may be indicated in order to protect the interests of the disabled attorney and the attorney's client.

(f) No attorney transferred to inactive status under the provisions of this Rule may resume active status until reinstated by order of the supreme court. Any attorney transferred to inactive status under the provisions of this Rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as the supreme court may direct in the order transferring the respondent to inactive status or any modification thereof. Such application shall be granted by the supreme court upon a showing that the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the supreme court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the supreme court shall

designate. In its discretion, the supreme court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with ~~[the provisions of]~~ subsection (a) ~~[above]~~ of this Rule, and, thereafter, in proceedings duly taken, the attorney has been judicially declared to be competent, the supreme court may dispense with further evidence that the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as are deemed proper and advisable.

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(h) Transfer of an attorney to inactive status pursuant to this Rule shall not preclude Disciplinary Counsel's investigation of the attorney's conduct, including but not limited to, the gathering and preserving of evidence, provided that no disciplinary proceeding shall be commenced and any pending disciplinary proceeding against the attorney shall be held in abeyance while the attorney remains on inactive status pursuant to this Rule.

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## 2.22. Confidentiality.

(a) **General rule.** The files, records and proceedings of the Disciplinary Board, the hearing committees or officers, and Disciplinary Counsel, and of mentors participating in minor misconduct programs pursuant to Rule 2.7(b) of these Rules, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of an attorney, shall be deemed confidential and shall not be disclosed except under the following circumstances:

(1) As between Disciplinary Counsel, the committees or officers, the Disciplinary Board and the supreme court in the furtherance of their duties;

(2) As between the Disciplinary Board, Disciplinary Counsel and an attorney admission or disciplinary authority, or judicial selection or disciplinary authority, of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice;

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(7) Where 90 days have passed since the service on a respondent of a Petition for discipline, unless

(A) such time is extended by the Disciplinary Board Chairperson for no more than 45 days for good cause shown or

(B) the Disciplinary Board or the supreme court imposes a private reprimand or a private informal admonition, pursuant to Rule 2.3(a) of these Rules, or stays a private reprimand or private informal admonition pursuant to Rule 2.3(e) of these Rules.

(8) Where reinstatement proceedings are initiated pursuant to Rule 2.17(c) of these Rules.

(b) **Disclosure of evidence of a crime.** Upon receipt of trustworthy evidence that an attorney has committed a crime and to protect the interests of the public, the administration of justice, or the legal profession, the Chairperson of the Disciplinary Board may

authorize Disciplinary Counsel to disclose the evidence to appropriate law enforcement or prosecuting authorities. Disciplinary Counsel may not disclose that an attorney voluntarily sought, received, or accepted treatment from the Attorneys and Judges Assistance Program or the record of such treatment.

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**(d) Disclosure of resignation affidavit.** An affidavit resigning in lieu of discipline or consenting to disbarment submitted pursuant to Rule 2.14 of these Rules shall be submitted to the hearing committee or officer, to the Disciplinary Board, and to the supreme court at any time that the attorney applies for reinstatement. Such affidavit shall also be supplied to an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice.

**(e) Authorized statements.** In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the respondent, the Disciplinary Board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the respondent to a fair hearing without prejudgment, and to state that the respondent denies the allegations. The statement shall be first submitted to the respondent involved for ~~his or her~~ the respondent's comments and criticisms prior to its release, but the Disciplinary Board in its discretion may release the statement as originally prepared.

**(f) Supreme Court records are generally public.** Except as ordered by the supreme court, or as otherwise provided by these Rules, the files, records and proceedings filed with the supreme court by the Disciplinary Board, by Disciplinary Counsel or by a respondent, as well as any oral argument held before the supreme court in connection with any disciplinary proceedings, are not confidential, except that in proceedings under Rule 2.19 of these Rules, any order transferring an attorney to inactive status or subsequently to active status shall be a matter of public record, but otherwise, the record of the proceedings shall not be publicly disclosed.

**(g) ABA databank coordination.** In addition, the Disciplinary Board shall transmit notice of all public discipline imposed by the supreme court, or transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association.

### **2.23. Interim suspension.**

**(a)** Upon receipt of sufficient evidence demonstrating that an attorney has committed a violation of the Hawai'i Rules of Professional Conduct and poses a substantial threat of serious harm to the public, Disciplinary Counsel may:

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**(b)** Upon examination of the evidence transmitted to the supreme court by Disciplinary Counsel and of rebuttal evidence, if any,

that the attorney has transmitted to the supreme court prior to the supreme court's ruling, the supreme court may enter an order immediately suspending the attorney, pending final disposition of the disciplinary proceedings predicated upon the conduct of causing the harm, or may order such other action as it deems appropriate.

(c) On notice to Disciplinary Counsel, an attorney suspended pursuant to subsection (b) of this Rule may move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as justice requires.

(d) An order imposing an interim suspension on an attorney under this rule shall not constitute a suspension of the attorney for the purposes of Rule 2.16 unless the supreme court shall otherwise order.

#### **2.24. Audit of trust accounts.**

##### **(a) When audit may be ordered.**

(1) The Chairperson may order an audit of any trust accounts maintained by an attorney upon:

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(vii) Disciplinary Counsel's request for other good and sufficient reasons.

(2) Disciplinary Counsel may order and supervise an audit when an attorney's trust account

- (i) check is paid against insufficient funds or dishonored or
- (ii) balance falls below zero.

(b) **Random audits.** The Disciplinary Board may randomly order audits of trust accounts.

(c) **Cost of audit.** Audits conducted in any of the circumstances enumerated in ~~[paragraph]~~ subsections (a)(1) or (b) [above] of this Rule shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements. Audits conducted in either of the circumstances enumerated in ~~[paragraph]~~ subsection (a)(2) of this Rule shall be at the cost of the attorney unless the Chairperson determines upon trustworthy evidence, the financial institution erred. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit.

(d) **Examination of other financial accounts.** Nothing in this rule shall preclude the examination of the other financial accounts of an attorney if the examination of the attorney's trust accounts reveals to the satisfaction of the Chairperson or Disciplinary Counsel that the attorney is not in substantial compliance with trust accounting requirements.

(e) **Review.** Disciplinary Counsel's decision to order an audit may be appealed to the Chairperson. The appeal must be filed in writing with the Chairperson within fifteen (15) days after Disciplinary Counsel notifies the attorney an audit has been ordered. The decision of the Chairperson or the Chairperson's designee is not further appealable.

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**2.26. Effective date.**

These rules shall become effective on July 1, 1974, and any disciplinary investigation pending on that date shall be transferred to the Disciplinary Board, provided that any case then pending with respect to which a formal hearing has been commenced shall be concluded under the procedure existing prior to the effective date of these rules.

DATED: Honolulu, Hawai'i, April 15, 2026.

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens

/s/ Karen T. Nakasone

