



## Holiday Reminder

The holidays are here, and we would like to remind you that gifts to judges and court employees are generally improper. HRPC 3.5(a); HRPC 8.4(f); Disciplinary Board Formal Opinion No. 24 (1979). If, however, there is a bona fide social relationship justifying a gift, and the gift does not otherwise violate the Hawaii Rules of Professional Conduct or the Code of Judicial Conduct, then the gift is not proscribed.

## HRPC 8.3(d) Reminder

HRPC 8.3(d) has been in effect since July 1, 1999. Attorneys should review this rule carefully. Agreements and attempted agreements to conceal professional misconduct or thwart a disciplinary investigation are unethical, including in settlement contexts. Attorneys may not negotiate, attempt to settle, or settle any legal matter by threatening to file or refrain from filing a disciplinary complaint against any other attorney. Attorneys also may not offer, agree to, attempt, negotiate, enter into, or acquiesce in the formation of any agreement limiting the ability of the attorney or any other person to either file a disciplinary complaint against any lawyer or cooperate with a disciplinary proceeding or investigation.

## Motions to Set Aside Deferred Acceptance Pleas

In order to provide guidance to attorneys regarding interpretation of the Hawaii Rules of Professional Conduct, the Disciplinary Board advises that a bar member raised the matter involving the propriety of the prosecutor filing motions to set aside orders for deferred acceptance of no contest pleas and issuance of bench warrants without notice to counsel who handled the pleas. A special Ad Hoc Committee of the Disciplinary Board, which included a criminal defense attorney, was convened to review the issue. HRPC 3.5(d) provides that in an adversary proceeding, an attorney shall not communicate as to the merits of the cause with a judge or an official before whom the proceeding is pending

except (1) in the course of the official proceedings in the cause, (2) in writing if the attorney promptly delivers a copy to the opposing counsel or party (if not represented by a lawyer), (3) or orally upon notice to the opposing counsel or party (if not represented by a lawyer). After research (including a survey of jurisdictions), consultation, and discussion, the Committee determined that the filing of such a motion initiates the "adversary proceeding." Stated differently, there is no "cause" until after the filing of the motion; therefore, the Committee concluded that HRPC 3.5(d) is not applicable to this situation.

## Notice of Resignation

The Supreme Court granted former Honolulu attorney JONATHAN J. EZER'S request to resign from the practice of law in lieu of discipline, effective September 29, 2000.

An attorney may resign from the practice of law in lieu of discipline by delivering to the Disciplinary Board an affidavit acknowledging that he or she knows that if disciplinary charges were predicated upon matters under investigation, or if formal disciplinary proceedings were prosecuted, he or she could not successfully defend himself or herself.

The Courts' Order is a public record. Ezer's affidavit, however, which sets forth the factual allegation against him, remains confidential.

Resignation from the practice of law in lieu of discipline is akin to disbarment for all purposes under the Supreme Court Rules, including reinstatement.

Ezer, 44, and a graduate of California Western School of Law, was admitted to the Hawaii bar in 1980, but has been administratively suspended from the practice of law since February 16, 1999, for failing to pay his attorney registration fees and bar dues.

## Notice of Transfer to Inactive Status

After considering the Disciplinary Board's Report and Recommendation for the Disbarment of suspended attorney

by Carole R. Richelieu,  
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