

# Ethics & Issues

## Disciplinary Board Appointments And Officers

The Disciplinary Board is an 18-member body appointed by the Hawaii Supreme Court from candidates nominated by the Supreme Court's Nominating Committee. The newest members of the Board are Chief Lee D. Donohue (Ret.), retired Chief of Police of the Honolulu Police Department, and the Honorable Leslie A. Hayashi, Judge for the District Court of the First Circuit of the State of Hawaii. Leaving the Board were Faith P. Evans and the Honorable J. Michael Seabright, whose expertise, experience, and commitment will be missed.

Corlis J. Chang, Diane D. Hastert, (Board Vice Chairperson), Thomas D. Welch, Jr., and the Honorable Evelyn B. Lance (Ret.), were reappointed by the Court. The new and reappointed Board members will serve 3-year terms expiring June 30, 2008.

The 12 remaining members of the Board are (asterisks indicate non-attorneys): Rustam A. Barbee; Richard A. Chamberlin, Ph.D.\*; Richard A. Coons\* (Board Treasurer); Gary M. Farkas, Ph.D., MBA\*; Lynn H. Higashi (Board Secretary); Joyce Ingram-Chinn, Ph.D.\*; Charles T. Kleintop (Board Chairperson); Honorable Clifford L. Nakea (Ret.); Dean T. Ochiai; Blake T. Okimoto; Jean E. Rolles\*; and Carroll S. Taylor.

## Discipline Notices

On July 6, 2005, the Hawaii Supreme Court issued an order extending the effective date RONALD G.S. AU's five-year suspension from June 7, 2005, to July 22, 2005.

## Notice Of Reinstatement

On July 18, 2005, the Hawaii Supreme Court reinstated suspended attorney JON CURTIS YOSHIMURA to the practice of law. Yoshimura may resume the practice of law upon payment of all required registration fees and dues.

## Employing/Contracting Suspended And Disbarred Attorneys

Can an attorney in good standing employ as (or contract with) a research assistant or paralegal an attorney whose license has been suspended or who has lost his or her license through disbarment or resignation in lieu of discipline? Yes, but only with circumspection and complete compliance with the Hawaii Rules of Professional Conduct ("HRPC").

HRPC 5.5(c) prohibits an attorney from allowing a suspended or disbarred lawyer (or a lawyer who has resigned in lieu of discipline) from having any contact with clients or any other persons who have legal dealings with the attorney's office, either in person, by telephone, or in writing.

The wording of RSCH 2.16(h) and HRPC 5.5(c) is similar, but RSCH 2.16(h) is directed to the suspended or disbarred attorney. RSCH 2.16(h) prohibits the employee/contractor (the attorney who was suspended or disbarred or who resigned in lieu of discipline) from having any contact with clients or any other persons who have legal dealings with the attorney's office, either in person, by telephone, or in writing.

Other ethical provisions that apply to this situation should also be carefully

considered and reviewed. For example, HRPC 3.4(e) states in part that a lawyer may not knowingly disobey an obligation under the rules of the tribunal. Additionally, HRPC 8.4(a) states in part that it is professional misconduct for an attorney to violate the rules of professional conduct through the acts of another or knowingly assist another to do so. If an employee/contractor engages in activities prohibited by RSCH 2.16(h), the attorney's assistance or acquiescence in such activities would also result in a violation of these provisions, as well as a violation of HRPC 5.5(c).

Further, a partner or supervisory attorney must make reasonable efforts to ensure that the firm or legal department has in effect measures giving reasonable assurance that all attorneys in the firm or department conform to the rules of professional conduct. See HRPC 5.1(a) and Comment [1]. Under certain circumstances, a non-hiring partner could be responsible for the hiring partner's rule violations. See HRPC 5.1(c).

Likewise, a partner must make reasonable efforts to ensure that the law firm has in effect measures giving reasonable assurance that a non-lawyer's conduct is compatible with the professional obligations of the attorney. See HRPC 5.3(a). An attorney having direct supervisory power over a non-lawyer must make the same effort, and under certain circumstances, can be ethically responsible for the conduct of a non-lawyer. See HRPC 5.3(b) and (c).

So long as the suspended or former attorney employed (or contracted) by an attorney does not engage in the unauthorized practice of law and limits his or her contact during the course of his or her employment/contract-related

activities to the attorney or other persons employed by the attorney (or associated with the attorney as partner, of counsel, or otherwise working in the office or firm), it is unlikely that the employee/contractor would violate RSCH 2.16(h). If the attorney limits the employee/contractor's activities as suggested in the previous sentence, it is thus unlikely that the attorney would violate the ethical provisions referenced. We suggest, however, that any attorney contemplating hiring such a person contact our office if there are any questions on any proposed specific activities of the employee/contractor.

## Case Notes

*(Continued from page 15)*

and 26080, July 18, 2005. In a HRS Chapter 587 termination of parental rights case involving the mother and father of five male children, the court did not notice any error and was not presented with a plain error issue. Therefore, the court affirmed because the applicable unchallenged findings were the facts relevant to each appeal, which supported the family court orders challenged by the father.

### Articles Wanted

If you are interested in writing either a short or long article of general interest to members of the bar, please send your submissions to the HSBA office or to anyone of our volunteer editors of the Hawaii Bar Journal. A short article is between six to eight pages, double-spaced, approximately 1,000 to 2,000 words. The longer law-review type articles are published in a special issue. These articles exceed 3,500 words.

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