Disciplinary Counsel's Report

By Gerald H. Kibe, Chief Disciplinary Counsel

First-time and/or relatively non-serious ethical violations usually result in the imposition of private discipline, of which there are two forms.

First, a **private reprimand** is imposed by the Disciplinary Board following hearing proceedings. Second, an **informal admonition** is imposed by the Office of Disciplinary Counsel without a hearing. Since a Private Reprimand is imposed by the full Disciplinary Board, it is considered a more serious sanction than an Informal Admonition.

The identity of a privately-disciplined attorney cannot be revealed by the Disciplinary Board or ODC. The private sanction can, however, be used against the attorney as an aggravating factor should he or she be found guilty of an ethical violation in the future.

As reported in last month's column, 31 Hawaii attorneys were informally admonished by ODC in 1993. No private reprimands were imposed during the year.

To provide a sampling of situations which can lead to informal admonitions, some case summaries from 1993 are presented here (references are to the former Disciplinary Rules; similar results can be expected under the new Hawaii Rules of Professional Conduct).

1. During settlement negotiations, an attorney communicated on two occasions (via fax) directly with the opposing party regarding the case without the knowledge and consent of that party's counsel. There was no prejudice to the opposing party. DR 7-104(A).

2. In a collection action, an attorney neglected for nearly 14 months to prepare and submit the final proposed order to the court. In mitigation, the attorney had not been the subject of prior discipline, he recognized the inappropriateness of his conduct, and there was no prejudice to his client. DR 6-101(A)(3) and DR 1-102(A)(5).

3. An attorney negligently commingled funds by depositing earned fees into his trust account.

In mitigation, the clients suffered no actual harm. See DR 9-102(A).

4. In a criminal matter, an attorney failed to respond to an incarcerated client's numerous written requests for information regarding the status of his case or to otherwise contact the client during a five-month period. In mitigation, the client was not prejudiced since the attorney had been working on the case, the attorney was cooperative in the investigation, and the attorney had not been the subject of prior discipline. See DR 6-101(A)(3).

5. An attorney simultaneously represented, without proper disclosure and consent, two clients having adverse interests. In mitigation, the attorney had not been the subject of prior discipline and there was no harm to the clients. See DR 5-105(B) and (C).

6. An attorney intermittently neglected a probate and a guardianship between 1986 and 1992. Both matters were concluded after the complaint was filed with ODC. In mitigation, the attorney was not entirely at fault for the delays, the client was not harmed, and the attorney had not been the subject of prior discipline. See DR 6-101(A)(3).

7. An attorney signed a medical lien on behalf of a personal injury client and thereafter disregarded the lien when the client disputed the medical provider's claim for payment. The attorney had attempted unsuccessfully to negotiate with the provider but thereafter took no steps to secure a legal determination as to the disposition of the funds and instead unilaterally paid the funds over to the client. See DR 1-102(A)(4); DR 7-101(A)(1).

8. While handling a divorce case, an attorney revealed confidential information about a client's case to the client's supervisor without authorization. DR 4-101(B).

9. An attorney had been privately disciplined in another state for entering into an agreement with a client which had the possible effect of intimidating her into refraining from exercising her right to discharge the attorney. The discharge clause specified that the client could discharge the attorney only after paying the greater of $350 per hour for the time spent on the case or 40% of the highest gross settlement offer received. The fact that the attorney subsequently reduced his claimed fee and did not intend to violate ethical rules were viewed as mitigating factors in the other jurisdiction. The attorney agreed to accept an admonition in Hawaii for his ethical infraction in the other state. DR 2-106(A).

(An array of factors may be considered in a decision to impose private discipline. Caution is thus advised against relying on these summaries as binding precedent.)

Discipline Notices

1. By order issued February 22, 1994, the Supreme Court allowed Honolulu attorney **DOUGLAS S. HASEGAWA** to resign from the practice of law in lieu of discipline. The resignation became effective March 24, 1994.

An attorney may resign in lieu of discipline by submitting to the Disciplinary Board an affidavit acknowledging that if disciplinary charges were based on matters under investigation, or if formal disciplinary proceedings were prosecuted, he or she could not successfully defend himself or herself.

The order accepting Hasegawa's request to resign from the bar in lieu of discipline is public, while Hasegawa's affidavit underlying the resignation request is, by Supreme Court rule, confidential. Resignation from the practice of law in lieu of discipline is, by Supreme Court rule, tantamount to disbarment for all purposes, including reinstatement.

Hasegawa, 52, was admitted to the Hawaii bar on November 8, 1967.

2. By order issued February 25, 1994, the Supreme Court immediately transferred Kailua attorney **RALPH GLANSTEIN** to inactive status due to disability. Glanstein will remain on inactive status until further order of the Court and is ineligible to practice law while on inactive status.

Glanstein, 60, was admitted to the Hawaii bar on October 2, 1979. ❑

ABA Toughens Policy on Discriminatory Clubs

Chicago -- In the future, "working from within" to change the policies of a private club which discriminates won't be sufficient for officers, members of the Board of Governors or aspirants for those positions in the American Bar Association.

At a meeting in Savannah in November, 1993, the Board of Governors voted that no officer or board member of the Association should be a member of discriminatory club after November 1994.

Acting on a resolution proposed by the Commission on Women in the Profession, the Board called for the resignation from membership in any club which discriminates, by policy or in practice, on the basis of race, color, sex, religion, disability or national origin unless the club has changed its policy by November 1994.

Previously, the ABA had adopted policy against holding professional and business meetings in discriminatory clubs, urged law firms to not hold firm functions at such clubs, and urged lawyers belonging to such clubs to work to reform their policies. ❑