



## Informal Admonitions Imposed in 1996

As previously reported in our annual statistical summary, 31 Informal Admonitions were imposed by ODC in 1996. Informal Admonitions are usually imposed in cases involving first-time and/or relatively non-serious ethical violations. Although confidential by Rule of the Hawaii Supreme Court, these sanctions may be used against an attorney as an aggravating factor should he or she engage in future ethical misconduct and may, therefore, become public.

To provide guidance regarding the type of unprofessional conduct which may result in an Informal Admonition, we are providing summaries of some cases from 1996. Please note, however, that an array of factors are considered in each case, including mitigating factors such as lack of prior discipline, inexperience, or lack of prejudice to the client. These summaries are thus not binding precedent but examples of specific factual situations which led to discipline.

•Six (6) attorneys received Informal Admonitions solely for failing to cooperate with ODC's investigation of their conduct. After being requested to submit information to ODC, the attorneys either failed to respond, responded untimely, or responded with incomplete information. HRPC 8.1(b) (failure to respond to a lawful demand for information) and/or HRPC 8.4(d) (failure to cooperate during the course of an ethics investigation).

•While handling a divorce case, an attorney failed to provide an accounting until requested by ODC, thereby violating HRPC 1.15(f)(3) and its predecessor rule. In addition, it took the attorney over ten (10) months from the time the attorney was terminated from representation to realize that the attorney was holding an unearned retainer and refund it (and then in the incorrect amount), thus violating HRPC 1.15(f)(4) (and its predecessor rule) (a lawyer shall promptly pay to the client funds in the

possession of the lawyer to which the client is entitled), as well as the Code's DR 2-110(A)(3) (requiring prompt refund of unearned fees upon withdrawal from employment) (now HRPC 1.16(d)).

•After being terminated from representation in an employment dispute case, another attorney likewise failed to promptly account and return an unearned retainer (HRPC 1.15(f)(3) and (4) and HRPC 1.16(d)), as well as continued to charge for legal services after termination without the client's consent and then withdrew the disputed fees, consequently violating HRPC 1.15(a) (unreasonable fees) and HRPC 1.15(c) (handling of funds).

•An attorney previously represented a client regarding business matters. Thereafter, the attorney represented another client in substantially related litigation in which the present client sued the former client. HRPC 1.9(a) (conflict: former client).

•An attorney advised a client about possible courses of action with respect to a potential divorce. When the attorney later served as the client's spouses attorney in the ensuing divorce action, the attorney violated HRPC 1.9(a).

•While handling a potential foreclosure matter, an attorney failed to take action to resolve the case for approximately a year and a half, and failed to communicate a settlement offer to the client. HRPC 1.3 (diligence), HRPC 1.4(a) (communication), and HRPC 3.2 (expediting litigation). The attorney also represented the same client regarding another potential foreclosure matter wherein the attorney's lack of diligence almost resulted in a foreclosure sale.

•A court-appointed attorney failed to promptly comply with a client's reasonable request for information and to promptly return all of the incarcerated client's documents, violating HRPC 1.15(f)(4) (a lawyer shall promptly deliver to the client, as requested by the client, properties in the lawyer's possession which the client is entitled to receive) and HRPC 1.4(a) (a lawyer shall promptly comply with a client's reasonable requests for information).

## Disciplinary Counsel's Report

by Carole R. Richelieu, Chief  
Disciplinary Counsel

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•While representing a criminal defendant, an attorney failed to comply with Hawaii Rules of Appellate Procedure 10 and 11 and two (2) Supreme Court orders by failing to docket the record on appeal or obtain the client's signature on a proper affidavit dismissing the appeal. The attorney also failed to show cause why the attorney should not have been sanctioned pursuant to a Supreme Court order. HRPC 3.4(e) (disobey an obligation under the rules of a tribunal). The attorney's untimely and incomplete responses during ODC's investigation of the underlying case also violated HRPC 8.4(d) (failure to cooperate).

•During the course of handling a divorce, an attorney loaned funds to the client, and then the attorney's secretary inadvertently deposited the loan repayment into the attorney's client trust account, thereby violating former DR 5-103(B) which prohibited such financial assistance to a client (now HRPC 1.8(e)), HRPC 1.15(c) (prohibiting commingling lawyer and client funds), and HRPC 5.3(b) (failure to supervise non-lawyer employee).

•In a bankruptcy matter, an attorney offered the client a written retainer agreement which contained a provision prospectively limiting liability for malpractice. HRPC 1.8(h). In addition, the attorney did not have a written non-refundable fee agreement signed by the client at the time the attorney accepted the fee and did not deposit the funds into a client trust account. HRPC 1.15(d) (non-refundable retainers).

•During negotiations regarding an alleged common wall encroachment, the attorney sent a letter on the subject matter directly to the opposing party (without opposing counsel's consent). HRPC 4.2.

•A prosecutor violated HRPC 4.2 by communicating with a defendant about the subject matter of the representation. Although the defendant approached the prosecutor first, the prosecutor knew that the defendant was represented by counsel.

•An experienced attorney delayed in finalizing a divorce decree thereby

violating HRPC 3.2 (a lawyer shall make reasonable efforts to expedite litigation) and HRPC 3.4(e) (disobey rules of a tribunal). The attorney was also monetarily sanctioned by the court.

•An attorney representing a client failed to state in a letter agreement that the fee was "non-refundable." HRPC 1.15(d) (retainers shall be treated as "non-refundable" only if agreed to in writing by the client).

•During the course of a Hawaii Paroling Authority hearing, defendant's counsel made an inappropriate comment about the prosecutor which disrupted the hearing and violated HRPC 3.5(c) (conduct intended to disrupt a tribunal) and HRPC 4.4 (using means that have no substantial purpose other than to embarrass a third person).

•By failing to respond to several client requests for information, an attorney violated HRPC 1.4(a). By failing to respond to ODC's requests for information, the attorney violated HRPC 8.4(d).

•When a prospective client telephoned an attorney, the attorney revealed to her that the attorney was representing an employee of her husband and asked her to remind the client to pick up his divorce decree. The attorney later revealed to his client his contact with the prospective client. The attorney's disclosures violated HRPC 1.6(a) (confidentiality).

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