

Informal Admonitions Imposed in 2007

In 2007, the Office of Disciplinary Counsel ("ODC") imposed 59 Informal Admonitions (compared to 25 in 2006). Informal Admonitions are generally imposed in cases involving first-time and/or relatively "non-serious" ethical violations. Although confidential by Hawaii Supreme Court rule, 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.

The following summaries of 2007 cases illustrate the types of unprofessional conduct that may result in Informal Admonitions. Mitigating factors, such as (for example) lack of prior discipline or inexperience, are not reflected in the summaries, but may well have affected the outcome. These summaries are not binding precedent but are examples of specific factual situations that led to discipline.

A lawyer filed an appellate brief and presented, without attribution, a large portion of another court's decision as his own work. HRPC 1.1 (competence); HRPC 5.3(b) and (c) (supervision and ratification); HRPC 8.4(a) (misconduct to violate the ethical rules).

A lawyer submitted a Writ of Certiorari to the United States Supreme Court before exhausting all appeals at the state level. HRPC 1.1 (competence); HRPC 8.4(a) (misconduct to violate the ethical rules).

In a family court matter, a lawyer failed to respond to a client's request for information and failed to provide a prompt accounting of the retainer. HRPC 1.4(a) (failure to communicate); HRPC 1.15(f)(3) (failure to account); HRPC 8.4(a) (misconduct to violate the ethical rules).

In separate criminal appellate matters, a lawyer received four admonitions for failing to timely file an opening brief, failing to withdraw from representation, and for failing to respond to the court's orders to show cause and pay the court sanction. HRPC 1.3 (diligence); HRPC

1.16(a) (declining or terminating representation); HRPC 3.4(e) (failure to expedite litigation); HRPC 8.4(a) (misconduct to violate the ethical rules).

In an immigration matter, a lawyer reimbursed one client with other clients' funds held in the client trust account and allowed a non-lawyer to sign client trust account checks. HRPC 1.15(c) (misappropriation); HRPC 1.15(e) (only Hawaii-licensed attorney authorized signatory on client trust account); HRPC 8.4(a) (misconduct to violate the ethical rules).

In a divorce matter, a lawyer prepared and filed several of the opposing party's pleadings and failed to provide any financial records regarding the opposing party's payment and partial refund. HRPC 1.7(a) (conflict of interest - direct adversity); HRPC 1.15(f)(3) (failure to account); HRPC 1.15(g) (a lawyer shall, at a minimum, maintain for at least six years after completion of the employment to which they relate, a subsidiary ledger containing individual client accounting records); HRPC 8.4(a) (misconduct to violate the ethical rules).

A lawyer waited a year before delivering a client's files to successor counsel and failed to cooperate with ODC's investigation. HRPC 1.15(f)(4) (failure to promptly deliver files as requested); HRPC 1.16(d) (failure to deliver files upon termination of representation); HRPC 8.1(b) (failure to respond to a demand for information in connection with a disciplinary matter); HRPC 8.4(a); HRPC 8.4(d) (failure to cooperate).

A lawyer failed to inform the court of being retained as counsel, failed to deposit a client's funds into the client trust account, failed to file an opening brief, failed to respond to the court's order to show cause, and failed to inform the client that he needed to withdraw from representation. HRPC 1.1; HRPC 1.3; HRPC 1.4(a) and (b); HRPC 1.15(a)(1) (all client funds shall be deposited into a client trust account); HRPC 1.15(c) (a lawyer in possession of client funds shall not commingle such funds with his own funds); HRPC 1.15(d) (all fee retainers shall be main-

tained in trust until earned); HRPC 1.16(a)(2) (lawyer shall withdraw if the lawyer's physical or mental condition materially impairs the ability to represent the client); HRPC 3.2; HRPC 3.4(e) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal); HRPC 8.4(a); HRPC 8.4(c) (prohibiting misrepresentations).

A lawyer attempted to settle a fee dispute with another lawyer by threatening to bring the matter to ODC's attention. HRPC 8.3(d)(1) (lawyer shall not negotiate, attempt to settle, or settle any legal matter by threatening to file a disciplinary complaint against any lawyer); HRPC 8.4(a).

A lawyer failed to appear at several pre-trial conferences, failed to pay a court ordered sanction, and failed to inform the client that he could not continue the representation. HRPC 1.1; HRPC 1.3; HRPC 1.4(a) and (b); HRPC 1.16(a)(2); HRPC 3.2; HRPC 3.4(e); HRPC 8.4(a); HRPC 8.4(c).

A lawyer continued to represent a client after the lawyer was suspended, failed to withdraw from representation, and failed to provide an accounting to the client. HRPC 1.15(f)(3); HRPC 1.16(a)(1); HRPC 3.4(e); HRPC 5.5(a) (unauthorized practice of law); HRPC 8.4(a).

A lawyer violated several aspects of the rules regarding the handling of client funds. HRPC 1.15(a) (lawyer must maintain an account in the lawyer's own name); HRPC 1.15(b) (improper labeling of bank account); HRPC 1.15(c) (a lawyer in possession of client funds shall not commingle such funds with his own funds); HRPC 1.15(d) (all deposited funds shall be sufficiently detailed to identify each item); HRPC 1.15(e) (all trust account withdrawals shall be made by authorized bank transfer and earned fees shall be made payable to the named lawyer); HRPC 8.4(a); HRPC 8.4(c).

In a family court matter, a lawyer failed to communicate with a client, failed to timely file an order with the court, and failed to cooperate with ODC's investigation. HRPC 1.1; HRPC 1.2(a) (scope of representation);

HRPC 1.3; HRPC 1.4(a); HRPC 3.2; HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

A lawyer failed to respond to a client's request for information, failed to provide an accounting to a client upon request, and failed to cooperate with ODC's investigation. HRPC 1.4(a); HRPC 1.15(f)(3); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(c).

Four lawyers received admonitions following their criminal convictions for Driving Under the Influence. HRPC 8.4(a); HRPC 8.4(b) (misconduct to commit a criminal act that reflects adversely on a lawyer's fitness as a lawyer in other respects).

A lawyer failed to disclose information regarding a client's insurance policy limits. HRPC 3.4(3); HRPC 8.4(a).

A lawyer received separate admonitions for violating several aspects of the rules regarding the handling of client funds. HRPC 1.15(f)(3); HRPC 1.15(g) (failure to maintain account records); HRPC 8.4(a).

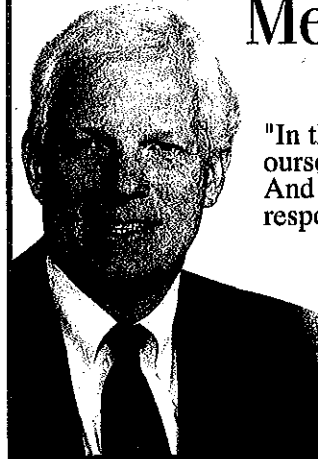
Two lawyers received admonitions for failing to comply with court rules following their suspension from the practice of law. HRPC 3.4(e); HRPC 8.4(a).

In a criminal matter, a lawyer failed to deposit a client's retainer into his client trust account, charged an unreasonable fee, had an improper fee agreement, and failed to cooperate with ODC's investigation. HRPC 1.5(a) (lawyer's fee shall be reasonable); HRPC 1.15(a)(1); HRPC 1.15(c); HRPC 1.15(d); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(c); HRPC 8.4(d).

In a criminal appeal, a lawyer received an admonition for failing to file an amended opening brief, as ordered by the court, for failing to respond to an order to show cause, and for failing to inform the client of his inability to continue the representation. HRPC 1.1; HRPC 1.3; HRPC 1.4(a); HRPC 1.16(a)(2); HRPC 3.2; HRPC 3.4(e); HRPC 8.4(a).

A lawyer improperly labeled the lawyer's client trust account, misappropriated client funds, and failed to cooperate with ODC's investigation. HRPC 1.15(b); HRPC 1.15(c); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

In a divorce matter, a lawyer failed to timely file an appeal, improperly charged a non-refundable retainer, and failed to cooperate with ODC's investi-



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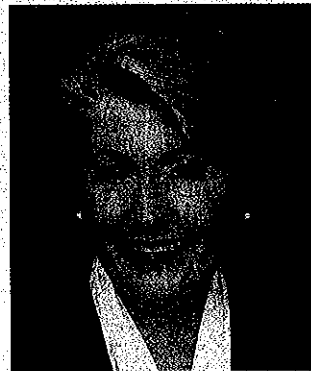
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gation. HRPC 1.1; HRPC 1.3; HRPC 1.15(d); HRPC 3.2; HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

Five lawyers received admonitions solely for failing to cooperate with ODC's investigation. HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

In a family court matter, a lawyer failed to comply with the court's order to file a motion to withdraw and substitute counsel and failed to cooperate with ODC's investigation. HRPC 1.3; HRPC 3.2; HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

A lawyer failed to prosecute the probate of a client's estate for over a year and failed to reasonably communicate with the client. HRPC 1.1; HRPC 1.3; HRPC 1.4(a) and (b); HRPC 3.2; HRPC 3.4(e); HRPC 8.4(a).

A lawyer failed to respond to a client's request for information and failed to provide an accounting when requested. HRPC 1.4(a); HRPC 1.15(f)(3); HRPC 8.4(a).

In a criminal appeal matter, a lawyer failed to timely file a notice of appeal, failed to respond to the client's request for information, and failed to maintain the appropriate financial records. HRPC 1.1; HRPC 1.2(a); HRPC 1.3; HRPC 1.4(a); HRPC 1.15(g); HRPC 3.2; HRPC 8.4(a).

A lawyer charged a non-refundable retainer, failed to deposit a client's retainer into the client trust account, and failed to maintain the appropriate financial records. HRPC 1.15(a)(1); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(g)(2); HRPC 8.4(a); HRPC 8.4(c).

A lawyer allowed a non-lawyer to withdraw funds from the client trust account, failed to maintain the appropriate financial records, and failed to cooperate with ODC's investigation. HRPC 1.15(e); HRPC 1.15(g); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

In a criminal matter, a lawyer charged a non-refundable retainer and misappropriated client funds. HRPC 1.15(c); HRPC 1.15(d); HRPC 8.4(a); HRPC 8.4(c).

A lawyer failed to timely file a client's appeal and failed to respond to the client's request for information. HRPC 1.2(a); HRPC 1.3; HRPC 1.4(a); HRPC 1.16(c); HRPC 3.2; HRPC 3.4(e); HRPC 8.4(a).

In a wrongful death matter, A lawyer violated several aspects of the rules regarding the handling of client funds. HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(f)(3); HRPC 1.15(f)(4); HRPC 1.15(g); HRPC 8.4(a); HRPC 8.4(c).

A lawyer improperly labeled client trust account checks, misappropriated client funds, and failed to withdraw earned funds from the client trust account. HRPC 1.15(b); HRPC 1.15(c); HRPC 8.4(a).

On separate occasions, a suspended lawyer received three admonitions for filing pleadings on behalf of a client and for writing a letter on behalf of a client. HRPC 3.4(e); HRPC 5.5; HRPC 8.4(a).

A lawyer deposited client funds into a client trust account in another State, charged a non-refundable retainer, improperly wrote a client trust account check payable to cash, and failed to maintain financial records. HRPC 1.15(a); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(e); HRPC 1.15(g); HRPC 8.4(a).

In a divorce matter, a suspended lawyer contacted an opposing party and his attorney regarding the subject of litigation. HRPC 3.4(e); HRPC 8.4(a).

A lawyer improperly deposited a client's check into the business account, improperly labeled the client trust account, commingled earned funds with client funds, misappropriated client funds, and failed to maintain appropriate financial records. HRPC 1.15(a)(1); HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(g); HRPC 8.4(a).

A lawyer improperly labeled the client trust account, commingled earned funds with client funds, and misappropriated client funds. HRPC 1.15(b); HRPC 1.15(c); HRPC 8.4(a).

In a personal injury matter, a lawyer failed to timely file a pretrial statement, failed to respond to the client's requests for information, and failed to cooperate with ODC's investigation. HRPC 1.3; HRPC 1.4(a) and (b); HRPC 3.2; HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

A lawyer failed to maintain a copy of a contingent fee agreement, failed to maintain appropriate financial records, and failed to cooperate with ODC's investigation. HRPC 1.15(g)(3); HRPC 1.15(h) (financial records shall be located

at the principal Hawaii office of the lawyer); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

A lawyer failed to timely deliver client files upon termination of representation and failed to cooperate with ODC's investigation. HRPC 1.15(f)(4); HRPC 1.16(d); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

A lawyer conditioned the further representation of a client upon the client first dropping an ODC complaint. HRPC 8.3(d)(2) (lawyer shall not attempt to limit the ability to file a disciplinary complaint); HRPC 8.4(a).

A lawyer misrepresented his address and failed to cooperate with ODC's investigation. HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(c); HRPC 8.4(d).

Disciplinary Board Appointments

The Disciplinary Board is a 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: A. Didrick Castberg, Ph.D.; Joy Miyasaki, Esq.; Nathan Natori, Esq.; and Eugene Uemura. Leaving the Board were Corlis J. Chang, Esq.; Richard A. Coons, CPA; Chief Lee D. Donohue (Ret.); and Thomas D. Welch, Jr., Esq.

The 14 remaining members of the Board are (asterisks indicate non-attorneys): Rustam A. Barbee; Gary M. Farkas, Ph.D., MBA*; Diane D. Hastert; Honorable Leslie A. Hayashi; Joyce Ingram-Chinn, Ph.D.*; Richard J. Kowen, Esq.; Honorable Evelyn B. Lance (Ret.); Philip Lowenthal, Esq.; Margaret Masunaga, Esq.; Hon. Clifford L. Nakea (Ret.); Dean E. Ochiai, Esq.; Blake T. Okimoto, Esq.; Jean E. Rolles, CPM; and Bradley R. Tamm, Esq.

Lawyers' Fund Notice

Due to the dishonest conduct of disbarred attorney Charles R. Brown, the Trustees of the Lawyers' Fund awarded \$750.00 (conversion) to his former client, Eric Casabar.