

Ethics & Issues

by Carole R. Richelieu, Chief Disciplinary Counsel

HRPC 3.5 Impartiality And Decorum of The Tribunal

The bar is reminded that HRPC 3.5 is applicable not only to courts and judges, but also to other decision makers such as the Disciplinary Board of the Supreme Court of Hawai'i or any of its Hearing Committees or Officers. The rule encompasses any person, agency, or body acting in an adjudicative capacity. Thus, for example, communicating ex parte with any member of the Disciplinary Board on the merits of an adversary proceeding pending before the Board (including any fact, factors in mitigation or aggravation, or conclusion of law) would violate HRPC 3.5(d), as well as HRPC 8.4(a) (misconduct to violate the rules of professional conduct). Note that HRPC 3.5(d) does not require representation of a client as a condition precedent or that the conduct be committed "knowingly" as some other ethics rules prescribe. Please carefully review the precepts of HRPC 3.5 prior to dealing with any decision maker to ensure compliance.

Discipline Notices

The Supreme Court of Hawai'i suspended Honolulu attorney JAMES C. BEAMAN from the practice of law effective June 14, 2004, due to Beaman's failure to cooperate with ODC's investigation of his professional conduct.

Beaman will remain suspended and cannot practice law until further order of the Supreme Court. Beaman cannot accept any new retainers, clients, or legal matters. He must also return to his existing clients their papers, property, and unearned advance fee payments. Meanwhile, the investigation of the pending complaint will continue.

After adopting the parties' stipulation of facts, conclusions of law, and aggravating and mitigating factors, the Disciplinary Board of the Hawai'i Supreme Court imposed a Public Reprimand upon Honolulu attorney DAVID G. BETTENCOURT for committing a criminal act (his conviction for committing the offenses of Wilful Failure to File Return by failing to make and transmit his 1995 through 1999 annual State of Hawai'i general excise tax returns). This criminal conduct reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects and violated the rules of professional conduct.

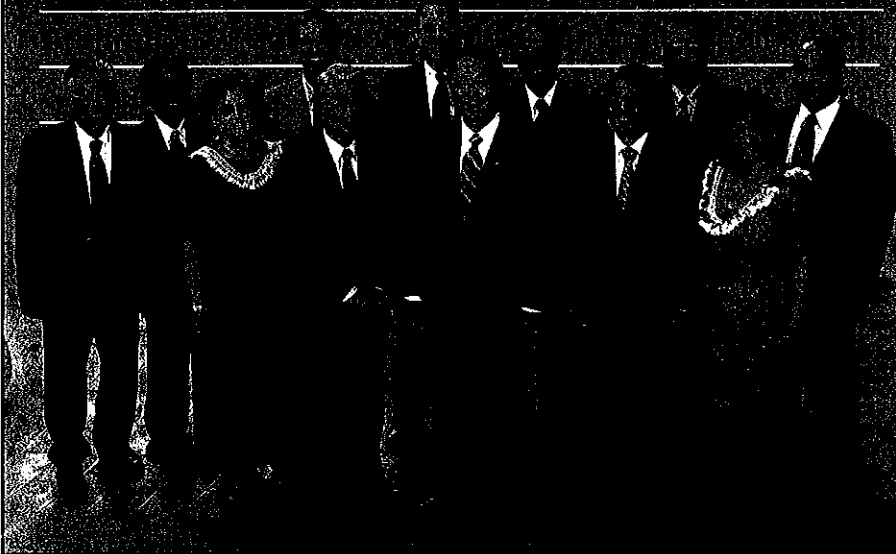
The factors in aggravation included a 1985 Public Censure for Bettencourt's federal court conviction for failure to file a federal income tax return for 1978 and a 1981 Private Reprimand for his federal court conviction for forcibly interfering with a United States special agent in the performance of the agent's official duties in 1979. The factors in mitigation included his good faith effort to make court-ordered restitution and his cooperative attitude in the proceedings. While the Reprimand does not prevent Bettencourt from continuing to practice law, it causes the sanction for any future violations to be more serious than would otherwise be the case.

Bettencourt, 58, was admitted to the Hawai'i bar in 1970 and is a graduate of the University of California at Berkeley Boalt Hall School of Law.

Reappointment of Lawyers' Fund Trustee

On June 10, 2004, the Hawai'i Supreme Court reappointed CURTIS Y. HARADA as a Trustee of the Lawyers' Fund for Client Protection for a five-year term commencing May 11, 2004 and expiring May 10, 2009.

CONSTRUCTION EXPERTS.



HCA

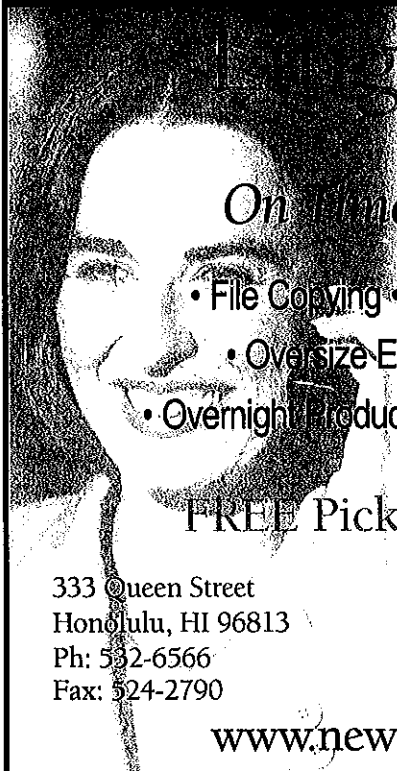
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Lawyers' Fund Notices

The Trustees of the Lawyers' Fund awarded \$127.98 to Wayne Barkas due to the dishonest conduct (unearned retainer) of former attorney Rhea D. Pappas. The Trustees also awarded \$1,500.00 to Taischa Monette due to the dishonest conduct (unearned retainer) of suspended attorney James G. Ching.

Trusteeship Notice

On May 14, 2004, the Hawai'i Supreme Court granted ODC's petition and discharged Assistant Disciplinary Counsel Charles H. Hite, with thanks, as Trustee for suspended attorney R. Richard Ichihashi.

Case Notes

(Continued from page 18)

against the insurer, because the insurer's failure to respond to a premature UIM claim did not prevent the claimant from suing the defendants within the applicable limitations period. A suit against alleged tortfeasors must be made before, not after, the insured can seek UIM benefits. Where the record shows no extraordinary circumstances preventing the claimant from filing a negligence action against the defendants within the applicable statute of limitations, the court may not use its equity powers to waive the statute of limitations.