



Disciplinary Counsel's Report

by *Laureen K. K. Wong, Chief Disciplinary Counsel, and Carole R. Richelieu, Assistant Disciplinary Counsel*

SEPT '95

The least serious of disciplinary sanctions is an Informal Admonition, which is usually imposed for first-time and/or relatively less serious ethical violations. Other factors in mitigation may also contribute to a determination that an Informal Admonition should be imposed.

An Informal Admonition is imposed by the Office of Disciplinary Counsel (ODC) without a hearing. Generally, ODC cannot reveal that an attorney has received an Informal Admonition.

However, disciplinary sanctions are cumulative, and the imposition of an Informal Admonition in one case can be used against an attorney as an aggravating factor should he or she be found in violation of an ethical rule in the future. The Admonition can then become public.

In 1994, 37 private Informal Admonitions were imposed upon Hawaii lawyers. The following are general summaries of some of the violations that resulted in the imposition of Informal Admonitions in 1994. Some references are to former Disciplinary Rules; similar results can be expected under the Hawaii Rules of Professional Conduct.

An attorney representing plaintiffs in a civil lawsuit stipulated to dismiss with prejudice certain defendants. Despite this agreement, the attorney subsequently filed a first amended complaint against the same defendants. After service of the amended complaint, the attorney then advised the defendants that they need not file an answer and that the case had been dismissed against them. See DR 7-102(A)(1) and DR 7-192(A)(2).

An attorney was convicted of DUI, failure to drive on the right side of the road, and disregarding longitudinal lane markings. Mitigating factors included the attorney's cooperation with the ODC investigation and the fact that the incident was an isolated occurrence. See DR 1-102(A)(6) and DR 7-102(A)(8).

An attorney failed to respond to ODC's letters and repeated requests for information. A subpoena was then issued requiring the attorney to appear at ODC and bring certain documents. The attorney evaded service and subsequently refused to accept mail from ODC.

Although no evidence of a disciplinary violation was found in the initial ethics complaint, an Informal Admonition was imposed for the attorney's failing to cooperate. See HRPC 8.4(d).

Employees of an attorney mistakenly deposited three insurance checks into an attorney's client trust account without proper endorsements. The attorney's failure to adequately train and supervise his nonlawyer staff regarding the proper handling of funds constituted neglect. See DR 6-101(A)(3).

An attorney failed to obtain a written agreement signed by the client for a non-refundable retainer. Despite repeated requests, the attorney failed to provide an accounting or any contemporaneous refund of the retainer. See DR 9-102(A) and (B)(3) and Formal Opinion 29.

An attorney failed to file a timely appeal in a criminal matter. Additionally, the attorney failed to communicate with his incarcerated client or respond to his letters or phone calls. The attorney also failed to cooperate with the ODC investigation. See DR 6-101(A)(3), HRPC 1.4, and HRPC 8.4(d).

An attorney received a payment from his client but failed to credit his client's account, and his billing statements did not reflect this payment. The attorney subsequently referred the client's account over to a collection agency for nonpayment, and a collections lawsuit was filed against the client. When the client produced evidence of payment, the attorney acknowledged this and even determined that the client had a refund of monies due. However, the attorney neglected to provide a proper accounting and make a timely reimbursement of monies owed to the client until eleven months later. See DR 9-102(B)(3) and DR 9-102(B)(4).

An attorney misplaced cancelled checks and receipts received from a client in a divorce case. The checks and receipts were to be used to substantiate the client's financial contributions toward the equity in the marital estate. When the client discharged the attorney, the checks and receipts were never located and returned to

(Continued on page 36)

Starting at \$89 A Month*



MINOLTA

Chip & Wafer Office Automation, Corp.
531 Waiakamilo Rd. Honolulu
842-5146

*36 Month Lease

Just indicate where you want the color to begin and the EP3170 will do it automatically ...in one pass.

Ethics & Issues

(Continued from page 16)

the client. However, the client was not harmed by the attorney's misconduct. See DR 9-102(B)(2) and HRPC 1.16(d).

We hope that these summaries are helpful in providing a sense of the conduct which can result in the imposition of private Informal Admonitions. However, since there were many factors considered in these decisions, caution is advised against relying upon these brief summaries for precedential purposes.

ENDNOTES (From page 30)

1. The Real Estate Recovery Fund, established in 1967, provides for recovery of no more than \$25,000 per transaction for damages sustained from the fraud, misrepresentation or deceit of a broker or salesman. H.R.S. § 467-16 (as amended). The Contractors Recovery Fund, patterned after the Real Estate Fund, was established in 1973. H.R.S. § 444-128(e) (as amended). Recovery from the Contractors Fund is not limited to fraud damages, although it is limited to owners of private residences in an amount of not more than \$12,500 per subject contract. This section was recently amended in 1994 to provide that, among other things, payment from the Recovery Fund can be either by court order or settlement agreement and that interest accrues on unpaid repayments at 10% per annum.
2. 11 U.S.C. § 525, as amended by the Bankruptcy Reform Act of 1994, Public Law 103-394.
3. *Perez v. Campbell*, 402 U.S. 637, 653 (1971).
4. See H.R. Rep. No. 95-595, 95th Cong., 2d Sess. 366 (1977); S. Rep. No. 95-989, 95th Cong., 2d Sess. 81 (1978). See, e.g., *Gringer v. Harris (In re Harris)*, 85 B.R. 858, 862 (Bankr. D. Colo. 1988) (Colorado statute automatically revoking real estate license until Real Estate Recovery Fund is repaid in full for judgment against licensed broker or salesman, and providing that bankruptcy discharge does not provide relief from statute, violated supremacy clause of Constitution); *Lambillotte v. Charlotte County (In re Lambillotte)*, 25 B.R. 392, 394 (Bankr. N.D. Fla. 1982) (county commissioner's refusal to renew a debtor's certificate of competency as a building contractor violated § 525).
5. 11 U.S.C. § 103(a).
6. See, e.g., *In re Alessi*, 4 C.B.C.2d 1003 (Bankr. Ct. N.D. 1981) (§ 525 not violated by governmental unit that refuses to grant debtor a permanent racing license, if refusal not based on the fact of debtor's prior bankruptcy but rather on findings concerning the debtor's conduct and lack of financial responsibility).
7. See, e.g., *Johnson v. Edinboro State College*, 728 F.2d 163 (3d Cir. 1984).
8. Pursuant to 11 U.S.C. § 523(2)(A). However, this remedy is available only where the debtor has filed a Chapter 7 liquidation case. Section 523(2)(A) debts are dischargeable in a Chapter 13 wage earner case. 11 U.S.C. § 1328.

RALPH ROSENBERG

COURT REPORTERS, IN

A Full-Service Court Reporting Firm

- ◆ ACCURATE, PROMPT & COURTEOUS SERVICE AT COMPETITIVE PRICES.
- ◆ STATEWIDE SERVICES & FREE CONFERENCE ROOMS. Offices in Honolulu, Hilo, Kona, Maui and Kauai. Conference rooms at all locations
- ◆ FREE PREPARATION OF NOTICES AND SUBPOENAS. All documents are prepared under the noticing attorney's supervision. All costs advanced.
- ◆ PROFESSIONAL TRANSCRIPTS & FREE ASCII DISKETTES. Computerized transcriptions and diskettes for instant retrieval. DISCOVERY ZX available.
- ◆ NO ADDITIONAL CHARGE FOR OUTER ISLAND DEPOSITIONS. 22 Court Reporters available to meet your needs. No additional charge for air or ground fare.
- ◆ FOREIGN & MAINLAND DEPOSITIONS.
- ◆ VIDEO-TAPED DEPOSITIONS COORDINATED

1001 Bishop Street, Suite 2460 Honolulu, HI 96813
Tel: 524-2090 Fax: 524-2596