

Ethics & Issues

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Informal Admonitions Imposed in 2002

As reported in our annual statistical summary, the Office of Disciplinary Counsel ("ODC") imposed 21 Informal Admonitions in 2002 (compared to 16 in 2001). Informal Admonitions are usually 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 2002 cases illustrate the types of unprofessional conduct that may result in Informal Admonitions. Mitigating factors, such as lack of prior discipline or inexperience, are not reflected in the summaries. These summaries are not binding precedent but are examples of specific factual situations that led to discipline.

- An attorney disclosed confidential information without the consent of the client by disclosing client information in a motion before the court. HRPC 1.6(a) (attorney shall not disclose confidential information absent client consent); HRPC 8.4(a) (misconduct to violate ethical rules).

- In a Family Court matter, an attorney submitted an order for the court's approval without obtaining the opposing party's or counsel's approval. HRPC 3.5(d)(2) (improper written communication with court without forwarding copy to opposing party or counsel); HRPC 8.4(a).

- Two separate attorneys communicated *ex parte* with an opposing party, regarding the subject matter of the litigation, without first obtaining opposing counsel's consent. HRPC 4.2 (lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter); HRPC 8.4(a).

- An attorney failed to deposit a client's retainer check into the attorney's client trust account and failed to promptly prepare and file an interpleader.

HRPC 1.15(c) (funds belonging in part to a client must be deposited into the trust account); HRPC 1.15(d) (client funds shall be deposited intact into client trust account); HRPC 1.15(f)(4) (lawyer shall deliver to a third person, as requested by the third person, funds in the possession of the lawyer to which the third person is entitled to receive); HRPC 8.4(a).

- In six separate cases, the court asked an attorney to make a charitable contribution in lieu of imposing sanctions for various indiscretions (e.g., tardiness, failure to appear). When the attorney failed to provide proof of payment, the court formally sanctioned the attorney and ordered 20 hours of community service. When asked for proof of compliance, the attorney overstated the hours completed and blamed the court for failing to provide a protocol for completing the community service. HRPC 1.15(b) (improper labeling of bank account); HRPC 3.2 (failure to expedite litigation); HRPC 3.4(e) (knowingly disobey an obligation under the rules of a tribunal); HRPC 5.3(c) (failure to supervise nonlawyer); HRPC 8.4(a).

- In an immigration matter, an attorney failed to communicate with a client after their unsuccessful deportation hearing, failed to maintain required account records, and failed to cooperate with ODC's investigation. HRPC 1.4(a) (failure to communicate); HRPC 1.15(g) (failure to maintain account records for six years); 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).

- An attorney represented both parties involved in an automobile accident; the interests of either client were clearly adverse to the other. HRPC 1.7(a) (conflict of interest); HRPC 8.4(a).

- While the underlying allegations were dismissed, three separate attorneys were sanctioned for failing to cooperate with ODC's ensuing investigations. HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

Discipline Notices

The Hawaii Supreme Court suspended Pearl City attorney JAMES G. CHING from the practice of law for a period of one year and one day effective June 3, 2003, and placed conditions on any application for his reinstatement.

Ching's ethical misconduct involved two separate clients and included numerous trust account violations including mishandling of client funds and failure to maintain proper accounting records, failure to act with diligence, failure to communicate, failure to expedite litigation, and failure to cooperate with the ODC's investigations of ethics complaints. The Court stated that Ching had demonstrated a disturbing pattern of recidivism as evidenced by five prior less severe sanctions.

Ching, 50, was admitted to the Hawaii Bar on September 29, 1978, and is a graduate of Gonzaga University.

A substitute Hawaii Supreme Court imposed a Public Censure and 300 hours of community service on Honolulu attorney ALVIN T. SASAKI for giving false testimony in a deposition to conceal Sasaki's false notarizations. Sasaki additionally falsely notarized numerous other documents. Sasaki also filed his false notarial record with the First Circuit Court. When brought up for disciplinary charges for a prior false notarization (which resulted in a Public Reprimand), Sasaki concealed information about his false notarizations from his attorney and made a false statement to the Disciplinary Board in order to further conceal his actions.

ODC moved for reconsideration of the decision based on: Respondent counsel's *ex parte* communication with the Court; ODC's consequent inability to respond to this *ex parte* communication; the Court's finding of a mitigating factor that was not supported by the record; and

the Court's order of sanction not being authorized by RSCH 2.

The substitute Supreme Court denied the motion.

While the Censure does not prevent Sasaki from practicing law in Hawaii, it may be considered in any future disciplinary proceedings.

Sasaki, 50, was admitted to the Hawaii bar in 1978, and is a graduate of Lewis & Clark College.

Reappointment of Lawyers' Fund Trustee

On April 25, 2003, the Hawaii Supreme Court reappointed GAYLE J. LAU as a Trustee of the Lawyers' Fund for Client Protection for a five-year term commencing April 28, 2003.

Lawyers' Fund Notice

The Trustees of the Lawyers' Fund awarded \$1,300.00 to Celia Batle Olaes due to the dishonest conduct (unearned retainer) of former attorney Eugene P. Ventayen.

30th Anniversary Dinner

The William S. Richardson School of Law will be celebrating its 30th anniversary with a special dinner on Saturday, September 13, 2003 at the Tapa Ballroom, Hilton Hawaiian Village. This 30th Anniversary Dinner will also welcome new Dean Avi Soifer and mahalo to Dean Larry Foster. Tables may be purchased for \$3,000, \$2,000, and \$1,000, or \$100. per person. Seating is limited. If you have questions, please contact Carol Mon Lee, caroll@hawaii.edu, ph. 956-8636.

HSBA's Calendar of Events

Friday, July 4, 2003
HSBA Office closed in observance of Independence Day.

Friday, July 11, 2003
Bar Review – A Social gathering for YLD Members only!
5:30 – 7:30 p.m.
Meritage (Restaurant Row)
For more information, contact John Egan at 535-8444 or Mark Tarone at 587-7930.

Thursday, July 17, 2003
HSBA Board Meeting
2:30 p.m. – 4:30 p.m., HSBA Conference Room
For more information, please contact Iris Ito, or Anna Cottrell (acottrell@hsba.org) at 537-186.

Tuesday, July 22, 2003
Real Property and Business Law
8:00 a.m. to 10:00 a.m.
(registration at 7:30 a.m.)
HEI Training Room, 1001 Bishop Street, 8th Floor, American Savings Bank Tower (fka Pacific Tower)
To register, please visit our website at www.hsba.org to download the registration form. For more information, please contact Paulette Suwa or Mary Grace Flores at 537-1868.

Wednesday, July 23, 2003
Basic Legal Training – Program Begins
4:30 pm- 6 pm, HSBA Conference Room
To register or for more information, please visit our website at www.hsba.org.