

Informal Admonitions Imposed in 2004

As reported in our annual statistical summary, the Office of Disciplinary Counsel ("ODC") imposed 39 Informal Admonitions in 2004 (compared to 29 in 2003). 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 2004 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 These summaries are not binding precedent but are examples of specific factual situations that led to discipline.

•In a family court matter, an attorney received an Admonition for neglecting a client's legal matter, failing to keep the client reasonably informed, and failing to appear at a hearing. HRPC 1.3 (lack of diligence); HRPC 1.4(a) and (b) (failure to communicate); HRPC 3.2 (failure to expedite litigation); HRPC 8.4(a) (misconduct to violate the ethical rules); HRPC 8.4(c) (misrepresentation).

•In a divorce action, an attorney failed to inform a client of an office relocation and failed to respond to a client's requests for information. HRPC 1.3; HRPC 1.4(a) and (b); HRPC 3.2; HRPC 8.4(a).

•A deputy prosecuting attorney made improper statements about a

criminal defendant's decision not to testify. HRPC 3.4(g) (personal opinion of a person's innocence); HRPC 4.4 (rights of a third person); HRPC 8.4(a).

•Two attorneys received Admonitions for solely failing to cooperate with ODC's investigation. 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).

•In a personal injury matter, an attorney failed to communicate with a client for 13 months, failed to adequately explain the case so the client could make an informed decision regarding the representation, and missed the statute of limitations. HRPC 1.3; HRPC 1.4(a) and (b); HRPC 3.2; HRPC 8.4(a).

•An attorney failed to file a client's civil complaint and failed to advise the client, in writing, to seek independent counsel before settling the legal malpractice claim. HRPC 1.3; HRPC 1.8(h) (prohibiting an agreement limiting an attorney's liability); HRPC 3.2; HRPC 8.4(a).

•An attorney signed immigration documents without a client's authorization. HRPC 3.3(a)(1) (knowingly make a false statement to a tribunal); HRPC 4.1(a) (knowingly make a false statement to a third person); HRPC 8.4(a); HRPC 8.4(c).

•An attorney violated several aspects of the rule regarding the handling of funds. HRPC 1.15(a)(1) (all client funds shall be deposited into a client trust account); HRPC 1.15(a)(2) (attorney shall maintain a business account into which all earned trust funds for professional services be

deposited); HRPC 1.15(b) (improperly labeling of bank account); HRPC 1.15(c) (funds belonging in part to a client and in part to the attorney must be deposited into the 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) (client funds must be deposited intact into the trust account); HRPC 1.15(e) (only an attorney shall be an authorized signatory on the client trust account); HRPC 5.4(d)(2) (prohibiting the practice of law with a nonlawyer as corporate officer); HRPC 8.4(a); HRPC 8.4(c).

•One attorney received three Admonitions and one attorney received two Admonitions for multiple instances where the attorney's trust account activity violated HRPC 1.15.

•An attorney, without the written consent of the client, improperly treated client funds as a non-refundable retainer and deposited the funds into a business account. HRPC 1.15(b); HRPC 1.15(c); HRPC 8.4(a).

•An attorney received an Admonition for playing an integral role in a legal document preparation company. HRPC 1.15(b); HRPC 5.3(b) (responsibility regarding nonlawyer assistants); HRPC 5.3(c)(1) (responsible for nonlawyer's conduct); HRPC 5.5(b) (lawyer shall not assist in the unauthorized practice of law); HRPC 8.4(a).

•An attorney failed to timely file several documents, including defaulting three times to file an Opening Brief, failed to respond to the client's request for information, and made a false statement in an affidavit to the Hawaii Supreme Court. HRPC 1.1

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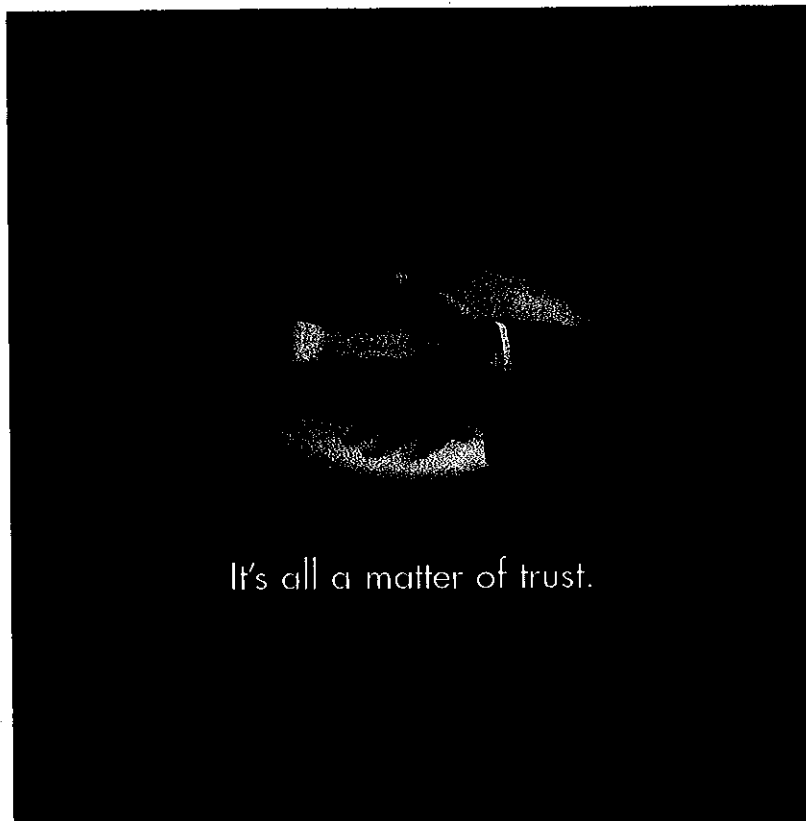


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(competence); HRPC 1.2(a) (scope of representation); HRPC 1.3; HRPC 1.4(a) and (b); HRPC 3.2; HRPC 3.3(a)(1); HRPC 3.4(a)(1) (misconduct to knowingly violate a court order or rule); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(c).

•An attorney refused to produce requested documents in connection with an ODC investigation. HRPC 8.1(a) (knowingly make a false statement of material fact); HRPC 8.4(a); HRPC 8.4(d).

•Three attorneys received Admonitions for directly communicating with opposing parties about the subject matter of the litigation, without the consent of the opposing parties' attorney. HRPC 4.2 (communication with person represented by counsel); HRPC 8.4(a).

•In a post-decree criminal matter, an attorney failed to communicate with a client for a combined 16 months. HRPC 1.3; HRPC 1.4(a); HRPC 3.2; HRPC 8.4(a).

•In a bankruptcy proceeding, an attorney failed to timely file a Proof of Claim, failed to inform the client of the passed deadline, and maintained an improperly labeled trust account. HRPC 1.3; HRPC 1.4(a) and (b); HRPC 1.15(b); HRPC 3.2; HRPC 8.4(a).

•An attorney negotiated a client's check before depositing the funds into a client trust account. HRPC 1.15(d); HRPC 8.4(a).

•In a family court matter, an attorney submitted an affidavit to the court knowing it was improperly notarized. HRPC 3.4(e) (knowingly disobey an obligation under the rules of a tribunal); HRPC 5.3(c)(1); HRPC 8.4(a); HRPC 8.4(c).

•In an immigration matter, an attorney failed to maintain required account records and failed to cooperate with an ODC investigation. HRPC

1.15(g) (failure to maintain account records); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

•An attorney maintained an improperly labeled trust account, wrote a check to one client using the funds of another client, and deposited his own funds to replenish the preceding funds. HRPC 1.15(b); HRPC 1.15(c); HRPC 8.4(a).

•In a workers' compensation matter, an attorney collected fees not authorized by statute and deposited the funds into the firm's business account. DR 1-102(A)(1) (lawyer shall not violate a disciplinary rule); DR 1-102(A)(6) (conduct that adversely reflects on fitness to practice); DR 2-106(A) (lawyer shall not charge an illegal fee); DR 2-110(A)(3) (an attorney shall return unearned fees upon withdrawal); DR 6-101(A)(3) (neglect); DR 9-102(B)(4) (prompt delivery of funds to which the client is entitled).

•A deputy prosecuting attorney failed to disclose all evidence regarding a criminal defendant. HRPC 3.4(e); HRPC 3.8(b) (a public prosecutor shall timely disclose all evidence known to the prosecutor that tends to negate the guilt of the accused); HRPC 8.4(a).

•An attorney prematurely transferred unearned funds from the client trust account to the business account. HRPC 1.15(a)(2) (1994) (funds belonging in part to a client and in part to the lawyer must be deposited, but the portion belonging to the lawyer may be withdrawn when due unless it is disputed by the client); HRPC 8.4(a).

•An attorney failed to timely record a client's deeds, thus delaying the settlement of the client's estate. HRPC 1.3; HRPC 1.4(a); HRPC 8.4(a).

•In a divorce action, an attorney failed to file the necessary documents to complete the divorce and failed to reasonably communicate with the client. HRPC 1.3; HRPC 1.4(a) and (b); HRPC

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3.2; HRPC 8.4(a).

•In a family court matter, an attorney failed to provide a client with copies of the opposing party's proposed order and eventual order granting custody. HRPC 1.4(a) and (b); HRPC 8.4(a).

•An attorney failed to timely file a client's civil complaint and failed to communicate with the client. HRPC 1.3; HRPC 1.4(a); HRPC 3.2; HRPC 8.4(a).

•Outside the courtroom, an attorney spoke in a harassing and intimidating manner to a witness. HRPC 4.4; HRPC 8.4(a).

•An attorney failed to appear at a client's hearing and violated several aspects of the rule regarding the handling of funds. HRPC 1.15(a)(1); HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(d); HRPC 3.4(e); HRPC 8.4(a).

•Pursuant to Hawaii Supreme Court Order, the Disciplinary Board imposed a reciprocal Admonition on an attorney for failing to reasonably supervise the attorney's staff and failing to maintain inviolate the confidence of clients' secrets.

•Pursuant to Hawaii Supreme Court Order, the Disciplinary Board imposed a reciprocal Admonition on an attorney for failing to keep a client reasonably informed and respond to reasonable requests for information.

•In an estate matter, an attorney unilaterally altered the memo portion for a check for attorney's fees and negotiated it. HRPC 8.4(a) and (c).

Discipline Notices

The Hawaii Supreme Court issued a Restraining Order restraining and enjoining Honolulu attorney JERROLD Y. CHUN from the practice of law effective May 2, 2005, pending the completion of a formal disciplinary

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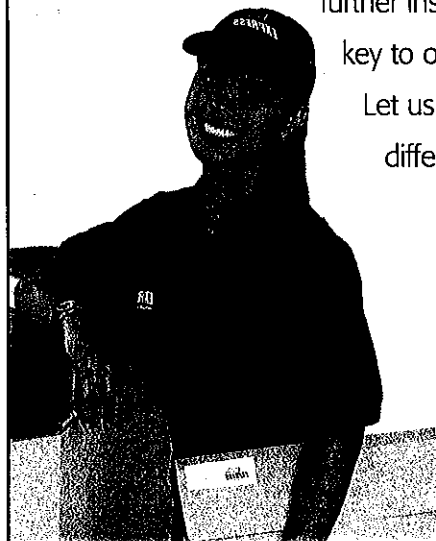
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proceeding in which the sole issue will be to determine the appropriate discipline for Chun's professional misconduct.

Chun's injunction is due to his convictions of three class B felony counts of theft in the first degree, one class B felony count of unlawful ownership or operation of a business, and ten class B felony counts of money laundering.

Chun, 56, was admitted to the Hawaii bar in 1977, and is a graduate of the University of California at Berkeley School of Law.

On May 2, 2005, the Hawaii Supreme Court ordered the resumption of disciplinary proceedings against former Hilo attorney NATHAN R. BRENNER. The Court had transferred Brenner to inactive status pursuant to RSCH 2.19 (disability). Subsequent to a medical examination, the Court determined that Brenner is not incapacitated from defending himself adequately in the pending disciplinary proceedings or practicing law. Pursuant to the Court's inherent power to regulate the practice of law, however, the Court ordered that Brenner remain on inactive status pending the final disposition of the disciplinary proceedings or further order of the Court.

Upon petition by the Office of Disciplinary Counsel (reciprocal discipline), the Hawaii Supreme Court disbarred California and Hawaii attorney ANTONIA G. SMITH from the practice of law on May 2, 2005, based on an October 12, 2004 order by the Supreme Court of California disbaring Smith in that court for multiple ethical violations including conflict of interest and dishonesty (misappropriation).

Smith, 57, was admitted to the Hawaii bar in 1978, and is a graduate of Southwestern University School of Law. She had been administratively suspended from the practice of law since 1996 for nonpayment of mandatory attorney registration dues and fees.

The Hawaii Supreme Court also granted suspended Big Island attorney TIM E. DESILVA's request to resign from the practice of law in lieu of discipline effective May 4, 2005. RSCH

2.12A (failure to cooperate)

An attorney may resign from the practice of law in lieu of discipline by delivering to the Disciplinary Board an affidavit acknowledging that he or she knows that if disciplinary charges were predicated upon matters under investigation, or if formal disciplinary proceedings were prosecuted, he or she could not successfully defend himself or herself.

The Supreme Court's Order is public record. DeSilva's affidavit (which sets forth the factual allegations against him), however, remains confidential. Resignation from the practice of law in lieu of discipline is akin to disbarment for all purposes under the Supreme Court Rules, including reinstatement.

DeSilva, 54, was admitted to the Hawaii bar in 1975, and is a graduate of the University of California at Berkeley School of Law.

On May 10, 2005, the Hawaii Supreme Court denied without prejudice suspended Honolulu attorney JON C. YOSHIMURA's petition for reinstatement to the practice of law in Hawaii. The Court had suspended Yoshimura for six months due to ethical misconduct by order dated April 11, 2002. The Court found that Yoshimura did not comply with all of the requirements for reinstatement. His affidavit mandated by RSCH 2.16(d) at the time of the suspension was tardy and deficient, and his affidavit mandated by RSCH 2.17(b) in support of his petition for reinstatement was likewise deficient.

On May 16, 2005, the Hawaii Supreme Court suspended California and Hawaii attorney CATHERINE M. BARRAD from the practice of law for three months effective June 15, 2005.

Barrad neglected a client's Maui divorce case, as well as failed to supervise her staff, communicate (including her new address) and respond to her client, and return the client's file, thereby violating multiple provisions of Hawaii's ethics rules.

Barrad, 51, was admitted to the

Hawaii Bar in 1993, and is a graduate of Western State University.

Barrad, like Chun, Smith, and DeSilva, will not be eligible to practice law until reinstated by order of the Supreme Court. None of these attorneys can accept new retainers, clients, or legal matters. They must also return to their existing clients their papers, property, and unearned advance fee payments.

YLD News

Junior Judges

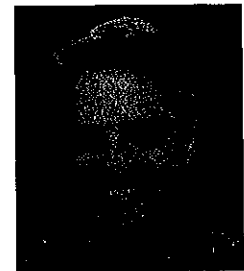
The YLD would like to thank the following volunteers for the Junior Judges presentations in May 2005 at Hokulani Elementary School and Lunalilo Elementary School: Emily R. Porter, Jill Hasegawa, Max Hannemann and Sean Sanada.

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