

# Ethics & Issues

## Informal Admonitions Imposed In 2006

As reported in our annual statistical summary, the Office of Disciplinary Counsel ("ODC") imposed 26 Informal Admonitions in 2006 (compared to 35 in 2005). Informal Admonitions are generally imposed in cases involving first-time and/or relatively "non-serious" ethical violations. Although confidential by Hawai'i 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 2006 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, but may well have affected the outcome. These summaries are not binding precedent. They are simply examples of specific factual situations that led to discipline.

- A lawyer violated several aspects of the rules regarding the handling of client funds. HRPC 1.15(a)(1) (all client funds shall be deposited into a client trust account); 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 funds entrusted to a lawyer shall be deposited intact into a trust account); HRPC 1.15(g)(7) (a lawyer shall, at a minimum, maintain for at least six years after completion of the employment to which they relate copies of all monthly trust account reconciliations); HRPC 8.4(a) (misconduct to violate the ethical rules).

- Two lawyers knowingly communicated directly with the opposing party regarding the subject matter of the liti-

gation without the consent of opposing counsel. HRPC 4.2 (communication with person represented by counsel); HRPC 8.4(a).

- In a collection matter, a lawyer failed to communicate with a client, failed to maintain proper accounting records as required by HRPC 1.15, and failed to cooperate with ODC's investigation. HRPC 1.4(a) (failure to communicate); HRPC 1.15(f)(3) (failure to account); HRPC 1.15(g) (failure to maintain account records); 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 divorce matter, a lawyer violated several aspects of the rules regarding the handling of client funds. HRPC 1.15(f)(4) (lawyer shall promptly deliver to the client or third person properties in the possession of the lawyer which the client or third person is entitled to receive); HRPC 1.15(g)(2) (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 1.15(g)(8) (a lawyer shall, at a minimum, maintain for at least six years after completion of the employment to which they relate copies of all monthly trust account reconciliations); HRPC 1.15(g)(9) (a lawyer shall, at a minimum, maintain for at least six years after completion of the employment to which they relate copies of all records showing at least quarterly reconciliations); HRPC 1.16(d) (upon termination, a lawyer shall protect a client's interests by refunding any advance payment of fee that has not been earned); HRPC 8.4(a).

- A lawyer violated several aspects of the rules regarding the handling of client funds, such as depositing unearned fees into the lawyer's business account and failure to return all

unearned fees upon termination. HRPC 1.15(a)(1); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(f)(4); HRPC 1.16(d); HRPC 8.4(a); HRPC 8.4(c) (prohibiting misrepresentations).

- In a family court matter, a lawyer neglected a client's legal matter, missed an appeal deadline, and failed to communicate with the lawyer's client. HRPC 1.1 (competence); HRPC 1.3 (lack of diligence); HRPC 1.4(a); HRPC 3.2 (failure to expedite litigation); HRPC 8.4(a).

- A lawyer failed to cooperate with ODC's investigation. HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- A lawyer failed to abide by a client's instructions, continued to represent one client whose interests were directly adverse to those of another client, and failed to keep the lawyer's client reasonably informed about the status of the matter. HRPC 1.2(a) (scope of representation); HRPC 1.4(a) and (b) (failure to communicate); HRPC 1.7(a) (conflict of interest - direct adversity); HRPC 8.4(a).

- A lawyer failed to obey a Hawai'i Supreme Court subpoena and failed to cooperate with ODC's investigation. HRPC 3.4(e) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- A lawyer failed to file an affidavit in compliance with RSCH 2.16(d) (evidencing compliance with requirements of disbarment or suspension order), filed an ex parte declaration, and failed to cooperate with ODC's investigation. HRPC 3.4(e); HRPC 3.5(d) (ex parte communication with a court); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- A lawyer failed to timely file an affidavit in compliance with RSCH 2.16(d). HRPC 3.4(e); HRPC 8.4(a).

- A lawyer filed a lawsuit in a court without being admitted to practice in that court. 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, including improper labeling of the client trust account and improper commingling of client funds by depositing funds into the business account instead of the client trust account. HRPC 1.15(a)(1); HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(d); HRPC 8.4(a).

- In a divorce matter, a lawyer failed to communicate with a client, failed to maintain proper accounting records as required by HRPC 1.15, and failed to cooperate with ODC's investigation. HRPC 1.4(a); HRPC 1.15(a)(1); HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(f)(3); HRPC 1.15 (g); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- A lawyer offered to settle a matter without advising the client to seek independent representation in an attempt to limit the lawyer's own liability and the client's ability to file a disciplinary complaint. HRPC 1.8(h) (lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice without first advising that independent representation is appropriate); HRPC 8.3(d)(2) (lawyer shall not attempt to limit the ability to file a disciplinary complaint); HRPC 8.4(a).

- A lawyer violated several aspects of the rules regarding the handling of client funds. HRPC 1.15(a)(1); HRPC 1.15(b); HRPC 1.15(c); HRPC 1.15(d); HRPC 1.15(e); HRPC 1.15(g)(2); HRPC 1.15(g)(7); HRPC 8.4(a).

- A lawyer's employment agreement contained paragraphs that attempted to limit a client's ability to file a disciplinary complaint. HRPC 8.3(d)(2); HRPC 8.4(a).

- A lawyer allowed a nonlawyer to sign trust account checks, issued a bank counter-check made payable to cash, improperly labeled trust account checks, and failed to cooperate with ODC's investigation. HRPC 1.15(b); HRPC 1.15(e) (only Hawai'i-licensed attorneys as authorized signatory on client trust account); HRPC 1.15(e) (all trust account withdrawals shall be made only

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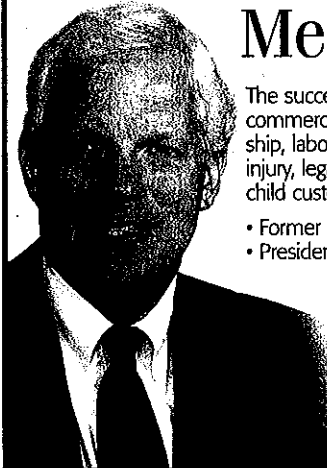
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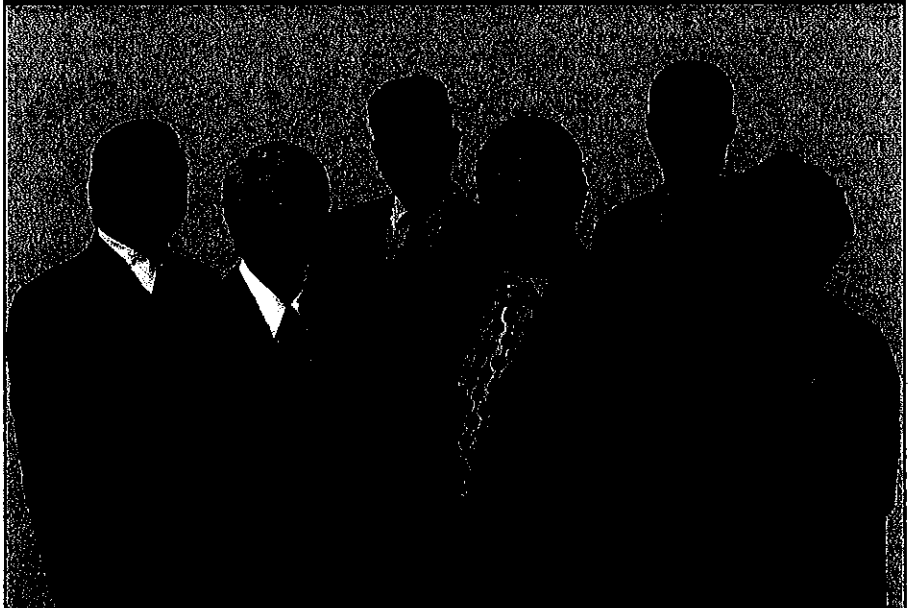
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by authorized bank transfer or by check made payable to a named payee); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- In a family court matter, a lawyer failed to timely prepare and file an order allowing a client's visitation rights. HRPC 1.3; HRPC 1.4(a); HRPC 3.2; HRPC 8.4(a).

- In a divorce matter, a lawyer prepared and filed pleadings for an opposing party. HRPC 1.7(a); HRPC 8.4(a).

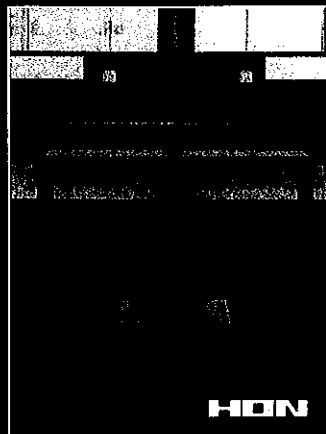
- In a criminal defense matter, a lawyer failed to timely prepare and file a client's exhibits and failed to cooperate with ODC's investigation. HRPC 1.1; HRPC 1.3; HRPC 3.2; HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- In a criminal defense matter, a lawyer failed to inform the court of a client's trial date. HRPC 1.1; HRPC 1.3; HRPC 3.2; HRPC 8.4(a).

- A lawyer improperly handled a client's retainer and settlement funds, improperly labeled the client trust account, and failed to cooperate with ODC's investigation. 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); HRPC 1.15(g)(7); HRPC 1.15(h) (bookkeeping records shall be located at the principal Hawai'i office of each lawyer); HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(a); HRPC 8.4(d).

- A lawyer received an admonition after being disciplined in another jurisdiction for a conviction of a criminal traffic offense. HRPC 8.4(a); HRPC 8.4(b) (misconduct to commit a criminal act that reflects adversely on a lawyer's fitness).

- In a collection matter, a lawyer knowingly filed a lawsuit on behalf of one client against another client. HRPC 1.7(a); HRPC 1.16(a)(1) (declining representation); HRPC 8.4(a).



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