

DISCIPLINARY BOARD
 OFFICE OF DISCIPLINARY COUNSEL

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DISCIPLINARY BOARD OF THE HAWAI'I SUPREME COURT

In re: | DB No. 20-8001
DISCIPLINARY BOARD RULES

ORDER ADOPTING [NEW] RULE 32 OF THE DISCIPLINARY BOARD'S RULES

Given the adoption by the Hawai'i Supreme Court of a major revision to the rule governing trustee proceedings (RSCH Rule 2.20), effective January 1, 2021, that require appointed trustees to "comply with the applicable rules of the Disciplinary Board," a revision to the Disciplinary Board Rules is necessary. Therefore,

IT IS HEREBY ORDERED that the Disciplinary Board Rules are amended to add new Rule 32, effective March 1, 2021, as follows:

[DBR] Rule 32. Role in Trustee Proceedings.

(a) **Board Appointment of Trustee Administrator.** The Board delegates to Chief Disciplinary Counsel its duties under RSCH Rule 2.20(g), to appoint a specific Disciplinary Counsel to serve as Trustee Administrator in all pending trustee matters. Where the Trustee Administrator has appeared in a trustee proceeding under RSCH Rule 2.20, it is not necessary for successor Trustee Administrators to enter a substitution in the record, other than to update the Judiciary Electronic Filing System (JEFS) entry for attorney for Disciplinary Counsel.

(b) **General Rule.** When it has come to the attention of the Board or Disciplinary Counsel that an attorney has become unavailable as defined by RSCH Rule 2.20(a)(5), the Trustee Administrator should act to ascertain:

(i) Whether the Subject Attorney had a law practice with active client matters; possessed files, records or other property belonging to clients or other persons; or was in possession of client, and/or third-party, funds held in one or more accounts in any financial institution.

(ii) Whether the Subject Attorney has designated, arranged for, or otherwise has an associated colleague who is an attorney who is willing to serve as a trustee, without compensation, for the purposes of RSCH Rule 2.20.

(iii) Whether the Subject Attorney, or estate of the Subject Attorney, has a guardian, personal representative, conservator, trustee, receiver, or other individual capable to protect or otherwise act on behalf of the Subject Attorney in coordination with any trustee that might be appointed pursuant to RSCH Rule 2.20.

(c) Special Considerations. When circumstances warrant, the Trustee Administrator should take action:

(i) When no attorney is willing to serve as trustee without compensation, the Trustee Administrator shall act to identify an attorney willing to serve as a compensated trustee, preferably with the consent or absence of objection from the Subject Attorney or person designated to act on behalf of the Subject Attorney or Subject Attorney's estate.

(ii) When a Subject Attorney in solo practice has died or is incapacitated due to mental incapacity under RSCH Rule 2.19, the Trustee Administrator should notify the financial institution identified on the Subject Attorney's bar registration statement to put a temporary hold on the funds pending appointment of a trustee by the supreme court.

(d) Request for Appointment of Trustee.

(i) When the Trustee Administrator has ascertained that a need exists for appointment of a trustee pursuant to RSCH Rule 2.20, the Trustee Administrator, with the approval of the Chairperson, shall file with the supreme court a motion, on behalf of Disciplinary Counsel, for appointment of a trustee under such terms and conditions as the circumstances warrant. The motion is to be captioned "In re: [Subject Attorney] (Bar No. ____, [status])" where status is either "deceased," "disbarred," "suspended," "disabled," "disappeared" or "deported."

(ii) The motion shall be supported by a declaration of the candidate trustee (1) disclosing any material connections or potential for conflict of interest as between the putative trustee, the Subject Attorney, or the clients of the Subject Attorney's law practice, and (2) describing any limitations or special terms of engagement that are relevant to the desired appointment.

(iii) When an attorney cannot be found who is willing to undertake appointment without compensation, the motion may seek compensated

appointment, provided the proposed hourly rate of compensation is detailed in the application, and approved by the supreme court, prior to any services being rendered, except for good cause shown. The motion should also acknowledge that notwithstanding such terms and conditions set forth in the motion, or any order approving appointment, the supreme court may allow compensation different from that requested in the motion, if such terms prove to have been improvident in light of developments not anticipated at the time of the fixing of such terms and conditions.

(iv) Interim applications for compensation, and/or expense reimbursement should be filed at least annually, but not more frequently than quarterly. Final applications for compensation, and/or expense reimbursement may be filed at any time.

(e) Activities of the Trustee Administrator subsequent to Appointment.

When a trustee is appointed pursuant to RSCH Rule 2.20, and that trustee is not an employee of the ODC, the Trustee Administrator shall:

(i) Monitor the progress of the trusteeship in accord with the order of appointment and requirements of RSCH Rule 2.20, and when necessary take such action as appropriate.

(ii) Respond, oppose, or otherwise comment, on behalf of the Disciplinary Board, to any orders of the supreme court, interim status reports, final reports, or fee applications filed in the Trustee Proceeding.

(iii) Provide reasonable administrative assistance to the appointed trustee in the performance of the trustee's duties; provided however, the Trustee Administrator shall not give legal advice and shall at all times act as Board representative.


(iv) Coordinate with the Lawyers Fund for Client Protection administrator and its board of trustees to preserve the fund's rights and interests.

(v) In cases that involve a deceased Subject Attorney, assist the trustee in filing claims in any pending probate case, or if no probate case is pending, file a demand for notice with the probate court under HRS § 560:3-804 to -805.

(vi) Take such further action as the supreme court may direct.

(Adopted January 28, 2021, effective March 1, 2021)

DATE: January 28, 2021



HON. CLIFFORD L. NAKEA (ret)
CHAIRPERSON, DISCIPLINARY BOARD of
the HAWAI'I SUPREME COURT