

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 AMENDING RULE 12 OF THE DISCIPLINARY BOARD'S RULES**

To resolve apparent ambiguity and internal inconsistency in the existing Disciplinary Board Rules (DBR), Rule 12(d) and to codify an implied, and existing defense to disciplinary charges at DBR Rule 12(e), an amendment to those rules are necessary. Therefore,

**IT IS HEREBY ORDERED** that the Disciplinary Board Rules to modify Rule 12(d) and 12(e), effective January 1, 2023, as follows:

**[DBR] Rule 12. Commencement; Scope of Investigation; Complaint Processing Time LimitsGoals; Protective Order.**

**(a) Duty of Counsel to Investigate.** Counsel has a duty to investigate all matters involving alleged violations of the Hawai'i Rules of Professional Conduct in accordance with RSCH 2.6(b) (2) and 2.6(b) (3).

**(b) Scope of Investigation.** Counsel shall investigate to elicit factual information relevant to any misconduct alleged or reasonably indicated by the circumstances.

**(c) Motion for Protective Order.**

(i) If a Respondent disputes the information sought, he or she may file a motion for protective order with the Board Chairperson through the Filing Clerk. A copy shall be served upon Counsel, and Counsel shall have an opportunity to respond. The Board shall decide the motion on the written submissions within 30 days. In his or her discretion, the Board Chairperson may hold oral argument on the motion.

(ii) If the motion for protective order is denied, a Respondent may file a motion for protective order with the Hawai'i Supreme Court. A copy shall be served upon Counsel, and Counsel shall have an opportunity to respond.

**(d) Complaint Processing Time LimitsGoals.**

(i) This Rule intends that the period of time from ODC's ~~receipt of a Grievance~~opening of a case (either by receipt of a complaint, or by ODC's initiation of an inquiry, to the ~~filing institution of a Petition for Discipline~~Formal Disciplinary Proceedings, or other disposition of the case, pursuant to the order of a Reviewing Board Member (as provided for in DBR Rule 16) shallould not exceed ~~eighteen months~~240 days.

(ii) Within ~~six~~fifteen months/~~180 days~~ from the ~~date a Grievance is received, or the date ODC initiated an inquiry~~opening of an ODC case, ODC's investigation and recommendation for disposition shallould be provided to a Reviewing Board Member pursuant to RSCH 2.7(~~4a~~) ~~(see and DBR Rule 16)~~.

(iii) Any formal Petition for Discipline or other disposition shallould be filed or otherwise implemented within two months/~~60 days~~ following the date ~~a recommendation is made to institution of formal proceedings or other disposition is ordered by~~ a Reviewing Board Member.

(iv) The ~~following extensions of time may be granted by the Board Chairperson: up to an additional six months for investigation and recommendation for disposition; and up to an additional 30 days for the filing of a Petition. Additionally, a matter may be designated as "Complex" by the Chairperson, in which case further reasonable extension may be granted at the Chairperson's discretion~~Chairperson may exercise discretion to grant extensions on showing of cause.

**(e) Failure to Meet Time LimitsGoals.** Failure of the ODC to meet the time frames provided for in ~~these rules~~section (d) is shall not a be grounds for the dismissal of any matter, but may be raised by a Subject Attorney as a mitigating factor upon a showing of

material prejudice. [See: ABA Std. Imposing Lawyer Sanctions, 9.32(j); see also: *In re Tenenbaum*, 918 A.2d 1109 (Del. 2007); *In re Johnson*, 319 Mont. 188 (2004)].

**(f) Failure to Cooperate.** If a subpoena is issued due to an attorney's failure to cooperate, the minimum sanction is an Informal Admonition in the absence of substantial mitigating circumstances showing a lack of fault on the attorney's part.

*(Amended February 24, 2011, effective July 1, 2011; further amended February 28, 2013; further amended November 23, 2022, effective January 1, 2023.)*

DATE: November 23, 2022



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