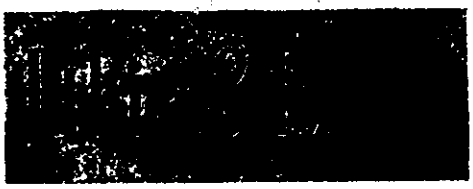

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Confidentiality and the Prospective Client

by Carole R. Richelieu, Acting Chief Disciplinary Counsel

It is axiomatic that information imparted by a client is protected under HRPC 1.6, which provides:

A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

The duty of confidentiality, however, may attach even without a formal attorney-client relationship. *See* HRPC, Scope [3]. ABA Formal Opinion 90-358 (1990) holds that Rule 1.6 protects "information imparted by a would-be client seeking to engage the lawyer's services even though no legal services are performed and the representation is declined."

Thus, even though an attorney-client relationship may not be formed with a prospective client, the attorney's duty is to maintain the confidentiality of any information obtained from that prospective client. A fiduciary relationship may result because of the nature of the circumstances under which the confidential information was divulged. Legal consultation occurs when the prospective client believes that he or she is approaching an attorney in a professional capacity with a manifest intent to seek professional legal advice.

Similarly, once an attorney receives confidential information from a prospective client, disclosure is limited to those exceptions specified in HRPC 1.6(b) and (c). For example, where an attorney learns that a prospective client plans conduct that is criminal or fraudulent and likely to result in death, substantial bodily harm, or substantial injury to the financial interests or property of another, the attorney has the professional discretion to reveal the information in order to prevent such consequences.

Please contact our office at 521-4591 if you have any questions about confidentiality or other ethical precepts.

Discipline Notice

• The Disciplinary Board of the Hawaii Supreme Court has imposed a PUBLIC REPRIMAND upon Honolulu attorney David C. Schutter. The Disciplinary Board's Order was issued on September 13, 1996. Schutter, 56, was admitted to the Hawaii bar on November 18, 1969.

The Board's Order follows an investigation conducted by the Supreme Court's Office of Disciplinary Counsel (ODC).

The Board's action is based on Schutter's contemptuous conduct before the Honorable Melvin K. Soong in the case of *Uria Howard Aga et al. v. Scott Hundahl, M.D., et al.*, Civil No. 91-2292-07 (First Circuit Court, State of Hawaii).

Lawyer disciplinary proceedings were brought against Schutter, who entered into an agreement with ODC regarding the facts, conclusions of law, and recommendation for discipline. After review, the Board accepted the stipulated agreement.

While the Reprimand does not prevent Schutter from continuing to practice law in Hawaii, it remains permanently on his record and could be used as a factor in aggravation should he be found in violation of ethical rules in the future.

• By Order issued August 27, 1996, the Supreme Court permitted former Honolulu attorney WENDELL H. MARUMOTO to resign from the practice of law in lieu of discipline, effective September 26, 1996. Marumoto, 61, was admitted to the Hawaii bar on November 26, 1958.

An attorney may resign in lieu of discipline by submitting to the Disciplinary Board an affidavit acknowledging that if disciplinary charges were based on matters under investigation, or if formal disciplinary proceedings were prosecuted, he or she could not successfully defend himself or herself.

The Order accepting Marumoto's request to resign from the bar in lieu of discipline is public. However, Marumoto's affidavit underlying the resignation is, by Supreme Court rule, confidential. Resignation from the practice of law in lieu of discipline is tantamount to disbarment for all purposes, including reinstatement.