

Disciplinary Counsel's Report

by Carole R. Richelieu, Acting
Chief Disciplinary Counsel

Hawaii Bar Journal

December 1996

Screening Guidelines

The Hawaii Rules of Professional Conduct contain different provisions for movement of an attorney from a private firm to another private firm and for movement of an attorney between a private firm and the government. Comment [6], HRPC 1.10. Unlike attorneys in the private sector, government attorneys may be "screened" under certain circumstances.

HRPC 1.10(d) (imputed disqualification) provides that disqualifications under HRPC 1.7 (conflict of interest: general rule) and HRPC 1.9(a) (conflict of interest: former client) are not imputed to government attorneys who have been screened from participation in adverse matters and who have not acquired confidential information (as defined by HRPC 1.6), as long as the representation would not result in prejudice to any party. *See also* HRPC 1.11 (the disqualified former government attorney must be screened).

The following screening measures are recommended for government attorneys for purposes of avoiding imputed disqualification. For purposes of this article, the "screened" attorney is being screened from the "pending" matter.

1. *Communication.* Non-screened members of the office must refrain from communicating, either orally or in writing, with the screened attorney regarding the pending matter. Conversely, the screened attorney must not communicate with non-screened members of the office about the pending matter.

2. *Access to Files.* The screened attorney should not have access to files and materials relating to the pending matter. The files of the pending matter should be physically segregated from the regular filing system, specifically tagged and accessed only by those attorneys and support personnel in the office who are working on the matter or need access for other reasons.

3. *Physical Location.* The screened attorney's office should be located away from the offices of those working on the pending matter, even if the attorney is

in the same department or the overall office has no departmental structure.

4. *Statement of Policy.* These measures should be stated in a written policy explained to all attorneys and support personnel within the office with an admonition that violations of the policy will result in sanctions.

Attorneys may also find these screening guidelines useful in situations involving movement of non-lawyer personnel, such as paralegals or legal assistants. If you have any prospective screening concerns you wish to discuss or other ethical questions, please call our office at 521-4591.

Discipline Notice

By Order issued October 8, 1996, the Supreme Court permitted former Honolulu attorney HAROLD W. GOBLE to resign from the practice of law in lieu of discipline. The resignation is effective on November 17, 1996. Goble, 66, was admitted to the Hawaii bar on May 2, 1977.

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 could not successfully defend himself.

The Order accepting Goble's request to resign from the bar in lieu of discipline is public. However, Goble'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.