

## Holiday Advice

As holiday festivities approach, we would like to remind attorneys that gifts to judges and court employees are generally improper. Hawaii Rule of Professional Conduct ("HRPC") 3.5(a); HRPC 8.4(f); Disciplinary Board Formal Opinion No. 24 (1979).

If, however, there is a bona fide, appropriate social relationship justifying a gift and the gift does not otherwise violate the HRPC or Code of Judicial Conduct, then the gift is not prohibited.

## Disposition of Sole Practitioners' Client Fees

Last month, this column generally addressed the disposition of closed client files. Sole practitioners should also be aware of certain ethical and practical considerations related to handling of their client files after their death.

ABA Formal Opinion 92-369 (1992) addresses the disposition of a deceased sole practitioners' client files and property. The Opinion recognizes that the death of a sole practitioner can have serious consequences on that attorneys' clients; for example, missed court dates and failure to file complaints before expiration of statutes of limitations. Thus, attorneys should prepare a plan providing for the future protection of client interests. This is consistent with an attorney's duties of competence, diligence, and protection of client files and property. HRPC 1.1, HRPC 1.3, and HRPC 1.15.

At a minimum, a sole practitioner should designate another attorney who would notify the sole practitioner's clients of their lawyer's death, and who would review the sole practitioner's files and determine which files need immediate attention.

The attorney who assumes responsibility for the client files must review them carefully to determine which need immediate action. Because the attorney does not represent the clients, the attorney should review only as much of each file as is needed to determine the identi-

ty of the client and the status of the matter.

Second, the attorney must make reasonable efforts to contact all clients of the deceased attorney and to request instructions in accordance with HRPC 1.15(b). Documents and property which belong to the client (or third person) must be returned. HRPC 1.15(f)(4). Finally, with respect to storage of the files of those clients whom the attorney could not locate, we offer the following advice. As discussed in our previous article, the HRPC does not specifically cover retention of client files; however, HRPC 1.15(f)(3) does provide that books and records regarding funds, securities, and other properties of a client (or third person) coming into the possession of the attorney shall be preserved for at least six (6) years after completion of the matter.

There may be unclaimed funds in the client trust account after reasonable efforts have been made to contact the clients. Ultimately, the disposition of client funds when the client cannot be found is a matter of state law, such as the Uniform Unclaimed Property Act. The attorney should, however, preserve any evidence which the client would need in order to reclaim the funds in the event the client is located.

Finally, the attorney who assumes responsibility should keep a record of clients who received their files and/or funds, clients who did not wish to receive their file or who could not be contacted, and files destroyed.

## Notices of Discipline

By Order filed October 14, 1997, Honolulu attorney **DAN S. IKEHARA** was suspended from the practice of law by the Supreme Court for 60 days, effective November 13, 1997.

Ikehara was suspended for his negligent misappropriation of client funds. Ikehara accepted a cash retainer for future services from his client, and placed it in his wallet. Thereafter, he neglected to place the retainer in his

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