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Supreme Court
SCAD-14-0001039
12-SEP-2014
08:21 AM**

SCAD-14-0001039

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DISCIPLINARY BOARD OF THE HAWAI'I SUPREME COURT,
Petitioner,

vs.

JAMES H. FOSBINDER,
Respondent.

ORIGINAL PROCEEDING
(ODC 14-005-9148, 14-006-9149,
14-007-9150, 14-008-9151, 14-009-9152)

AMENDED ORDER OF TRANSFER TO INACTIVE STATUS

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

On August 5, 2014, the Office of Disciplinary Counsel (ODC) petitioned to transfer Respondent James H. Fosbinder to inactive status, due to a mental or physical illness or disability. Insofar as disciplinary proceedings have been initiated against Respondent Fosbinder, and the instant petition was approved for filing by the Disciplinary Board Chair, we view the motion as a Disciplinary Board Petition for Removal to Inactive Status, made pursuant to Rules 2.19(b) and (c) of the Rules of the Supreme Court of the State of Hawai'i (RSCH). Petitioner nominates clinical neuropsychologist Dr. Ellen R.

Caringer, Ph.D, to examine Respondent Fosbinder. Respondent Fosbinder submitted no response to the petition. Therefore,

IT IS HEREBY ORDERED that the Clerk shall re-caption the case Disciplinary Board of the Hawai'i Supreme Court v. James H. Fosbinder.

IT IS FURTHER ORDERED that Respondent Fosbinder is immediately transferred to involuntary inactive status in this jurisdiction pursuant to RSCH Rules 2.19(c), effective with the filing of this order. Respondent Fosbinder shall remain on involuntary inactive status until further order of this court.

IT IS FURTHER ORDERED that Dr. Caringer is appointed to examine Respondent Fosbinder and to report to the Disciplinary Board with regard to Respondent Fosbinder's mental capacity and ability to participate effectively in the disciplinary proceedings. If Dr. Caringer declines to accept this appointment, Petitioner is authorized to select a different qualified medical expert to conduct the examination, pending approval of the supreme court. As requested in the petition, the examination shall be conducted at Respondent Fosbinder's expense, payable directly to Dr. Caringer.

IT IS FURTHER ORDERED that Respondent Fosbinder shall present himself at the time and place set by Dr. Caringer for examination.

IT IS FURTHER ORDERED that, no later than 60 days after entry of this order, the medical examiner shall file with the Disciplinary Board either (1) a report setting forth findings and conclusions with regard to Respondent Fosbinder's mental condition and capacity or (2) reasons the report could not be completed within the time set by this order. The medical examiner is reminded to file the report and supporting documentation under seal, consistent with the standards set forth in Rule 9.1(a) of the Hawai'i Court Records Rules.

IT IS FURTHER ORDERED that, upon transfer of Respondent Fosbinder to inactive status, the Office of Disciplinary Counsel shall suspend and hold in abeyance the investigation of complaints to the extent required by RSCH Rule 2.19(h).

IT IS FINALLY ORDERED that the Board shall publicize notice of the transfer of Respondent Fosbinder to inactive status, as required by RSCH Rules 2.19(d) and (e).

DATED: Honolulu, Hawai'i, September 12, 2014.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

