

**HAWAI‘I SUPREME COURT
COMMISSION ON PROFESSIONALISM**

**SECOND REPORT TO THE
HAWAI‘I SUPREME COURT**

Submitted By:

The Honorable James E. Duffy, Jr., Chair

Susan Arnett

The Honorable Joseph Cardoza

Steven Dixon

Lyn Flanigan

The Honorable Daniel Foley

David W. Hall

Grace Kido

Gayle Lau

The Honorable Steven Levinson

The Honorable Susan Oki Mollway

Michael Nauyokas

Nathan Nikaido

Terence O'Toole

Wesley Park

Judith Ann Pavey

The Honorable Karen Radius

Jill Ramsfield

Carole Richelieu

The Honorable Trudy Senda

Kevin Takata

The Honorable Terence Yoshioka

Calvin Young

June 29, 2007

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

SECOND REPORT TO THE HAWAI'I SUPREME COURT

June 29, 2007

I. ESTABLISHMENT OF THE COMMISSION ON PROFESSIONALISM

The Commission on Professionalism ("Commission") was established on March 14, 2005 by an Order of the Hawai'i Supreme Court signed by Chief Justice Ronald T. Y. Moon (Appendix "A"). Establishment of the Commission was recommended by the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism.

II. THE COMMISSION'S CHARGE

The Order establishing the Commission set forth its charge:

The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

- (a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;
- (b) identify barriers to implementation;
- (c) identify action steps to overcome barriers; and
- (d) propose a post-implementation evaluation process.

III. MEMBERS OF THE COMMISSION

The Members of the Commission consist of judges, practicing lawyers, law school faculty, representatives of entities regulating attorneys, and non-lawyer public members. Biographical information of the present Members is provided in Appendix "B."

IV. COMMISSION MEETINGS

The Minutes of the Commission meetings on September 1, 2006, February 9, 2007, and May 25, 2007 are presented in Appendix "C".

V. 2006-2007 PROJECTS REQUESTED BY THE HAWAII SUPREME COURT

The Hawai'i Supreme Court requested that the Commission undertake the following projects in 2006-2007:

1. Recommendation re adoption of ABA Model Insurance Disclosure Rule;
2. Continuing Education Projects:
 - A. Creation of a mandatory refresher course on Professionalism and Ethics;
 - B. Presentation at a Judicial Education Conference re what judges can do to encourage professionalism in their courts;
 - C. Presentation to HSBA members re professionalism and what judges expect of attorneys appearing in their courts;and

D. Creation of a question for inclusion on the HSBA's annual registration statement inquiring as to what CLE programs the attorney would like to see offered.

3. Recommendation whether "Of Counsel" relationships should be defined in the Rules of the Supreme Court of Hawai'i or the Hawai'i Rules of Professional Conduct

VI. COMMISSION RECOMMENDATION RE ABA MODEL INSURANCE DISCLOSURE RULE

The ABA Model Court Rule on Insurance Disclosure requires lawyers to disclose on their annual registration statements whether they maintain professional liability insurance. Under this proposed rule, a potential client would have access to this information in order to make an informed decision about whether to retain a particular lawyer. A committee chaired by Terry O'Toole and Wesley Park extensively studied the ABA proposed rule and what other jurisdictions have done, and met with representatives of the HSBA. After considerable discussion among Commission members, the Commission voted to recommend that the Hawai'i Supreme Court revise RSCH 17(d)(1) to require that attorneys disclose on their attorney registration statement whether they have professional liability insurance. This information is for data gathering purposes only, and individual attorney's insurance status will not be subject to access. The initial goal is to determine how many of the HSBA members are presently uninsured, identify the potential reasons for lack of insurance (prohibitive costs, lack of competitive insurers, etc.), and determine potential solutions (which could include an HSBA sponsored insurance program similar to the Oregon model). After the

information is gathered and evaluated, the Commission anticipates that it would then consider whether it would be appropriate to recommend that (1) the Rules of Professional Conduct be revised to require attorneys to disclose in writing to their clients/potential clients if they do not have professional liability insurance, and/or (2) clients/potential clients have internet access to an attorney's disclosure on their registration statement regarding whether they have professional liability insurance.

VII. REPORT RE CONTINUING EDUCATION PROJECTS

- A. Creation of a mandatory refresher course on Professionalism and Ethics
Representatives of the Commission's Committee re Mandatory Continuing Legal Education (chaired by Judge Daniel R. Foley and Calvin E. Young) are working with HSBA's Executive Director Lyn Flanigan and representatives of the HSBA's CLE and Professional Responsibility committees regarding creation, content, length, logistics, etc. of a Professionalism and Ethics course.
- B. Presentation at a Judicial Education Conference re what judges can do to encourage professionalism in their courts
Judge Terence Yoshioka is working with his sub-committee judicial chairs on each island, and anticipates that a presentation will be made at either the next Judicial Conference (Fall 2007) or the following conference (Spring 2008).
- C. Presentation to HSBA members re professionalism and what judges expect of attorneys appearing in their courts
Judge Yoshioka and his sub-committee are working on a presentation to HSBA members.

- D. Creation of a question for inclusion on the HSBA's annual registration statement inquiring as to what CLE programs the attorney would like to see offered

The HSBA's annual attorney registration process has been placed on-line and changing the form to include the CLE question would result in programming costs. As an alternative, the HSBA will gather the requested CLE information from a poll or survey utilizing available software.

VIII. RECOMMENDATION WHETHER "OF COUNSEL" RELATIONSHIPS SHOULD BE DEFINED IN THE RULES OF THE SUPREME COURT OF HAWAII OR THE HAWAII RULES OF PROFESSIONAL CONDUCT

Carole Richelieu is chair of a committee recently organized to examine "Of Counsel" relationships and make a recommendation as to whether such relationships should be defined in the Rules of the Supreme Court of Hawaii or the Hawaii Rules of Professional Conduct. HSBA members are being solicited to work on this committee as the committee's recommendation could have ramifications for HSBA members, law firms, and the public.

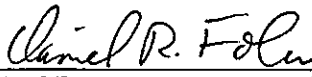
IX. COMPLETED COMMISSION PROJECTS IN 2006-2007

- A. The Commission recommended that the Hawaii Supreme Court revise RSCH 2.7(b)(3) by broadening the prior list of agencies, entities, programs, and individuals authorized for referrals for non-disciplinary proceedings for minor misconduct. The Supreme Court accepted the Commission's recommendation, and an Order Approving Referral Agencies was filed on April 11, 2006. See Appendix "D".
- B. The Commission recommended that the Hawaii Supreme Court revise RSCH 16.1 ("Purpose; scope" of the Attorneys and Judges Assistance

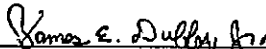
Program) to include law students at the William S. Richardson School of Law. The Supreme Court accepted the Commission's recommendation, and an Amended Order Amending Rule 16 was filed on December 18, 2006. See Appendix "E".

- C. The Commission recommended that RSCH 2.24 ["Audit of Trust Accounts"] be revised to shift the cost of an audit of an attorney's trust account to the attorney audited. This recommendation, together with proposed draft language, was forwarded to the Hawai'i Supreme Court, which put the proposed revision out for public comment. Following public comment, the Commission forwarded a revised proposal to the Supreme Court, where it is pending.

Respectfully submitted this 29th day of June, 2007.



JUDGE DANIEL R. FOLEY
Co-Chair, Continuing Legal
Education Committee



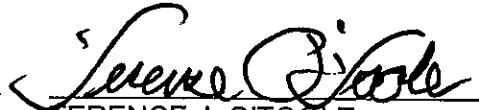
JUSTICE JAMES E. DUFFY, JR.
Chair, Commission on
Professionalism
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs



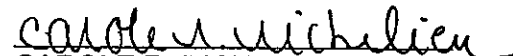
JUSTICE STEVEN H. LEVINSON
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs



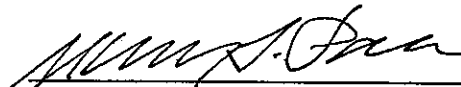
CALVIN E. YOUNG
Co-Chair, Continuing Legal
Education Committee



TERENCE J. O'TOOLE
Co-Chair, Committee
on Insurance Disclosure



CAROLE R. RICHELIEU
Co-Chair, Joint Committee
on Lawyer Regulation and
Remedial Programs
Chair, "Of Counsel" Committee



WESLEY PARK
Co-Chair, Committee
on Insurance Disclosure

Appendix

“A”

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Establishment of the

HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM

KIHAOKAOKA
CLERK OF THE SUPREME COURT
STATE OF HAWAI'I

2005 MAR 14 PM 1:22

FILED

ORDER ESTABLISHING THE HAWAI'I SUPREME COURT'S
COMMISSION ON PROFESSIONALISM
(By: Moon, C.J., for the court¹)

WHEREAS, in August 1996, the Conference of Chief Justices (CCJ) passed a resolution calling for a national study and action plan regarding lawyer conduct and professionalism, wherein the CCJ noted a significant decline in professionalism in the bar and a consequent drop in the public's confidence in the profession and the justice system in general and concluded that a strong coordinated effort by state supreme courts to enhance their oversight of the profession was needed; and

WHEREAS, in March 1999, the CCJ's January 1999 *National Action Plan on Lawyer Conduct and Professionalism* was published and disseminated to chief justices, lawyer disciplinary agencies, and state bar associations throughout the United States; and

WHEREAS, the National Action Plan sets forth programs, initiatives, and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession; and

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

WHEREAS, on August 2, 2001, the CCJ adopted the strategies for implementing the National Action Plan formulated by the American Bar Association in its report, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*; and

WHEREAS, the Hawai'i Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism (National Action Plan Committee), charged with the task of reviewing the National Action Plan and making recommendations to the supreme court, issued its final report on May 24, 2004.

NOW, THEREFORE, upon the recommendation of the National Action Plan Committee,

IT IS HEREBY ORDERED that:

(1) The Hawai'i Supreme Court's Commission on Professionalism is hereby established.

(2) The Commission is charged with enhancing professionalism among Hawaii's lawyers. The Commission's major responsibilities shall be to:

(a) develop strategies and recommendations to implement the National Action Plan initiatives, including the ABA's accompanying plan, as prioritized;

(b) identify barriers to implementation;

- (c) identify action steps to overcome barriers;
- and
- (d) propose a post-implementation evaluation process.

(3) The Chair of the Commission shall be the Chief Justice or the Chief Justice's designee. Commission members shall be appointed by the chief justice, upon the concurrence of a majority of the justices of the supreme court. In addition to the Chair, the Commission shall be comprised of a total of nineteen (19) members that reflect racial, ethnic, gender, and geographic diversity and as prescribed below:

(a) Judges.

- (i) Four (4) incumbent Hawai'i trial court judges chosen from the First, Second, Third, and/or Fifth Judicial Circuits;
- (ii) Two (2) incumbent judges chosen from the Hawai'i Supreme Court or the Intermediate Court of Appeals or both;
- and
- (iii) One (1) incumbent judge chosen from the United States District Court for the District of Hawai'i or the United States Court of Appeals for the Ninth Circuit.

(b) Practicing Lawyers. Four (4) practicing lawyers who are members of the Hawai'i State Bar Association, chosen from a list of ten

(10) nominees recommended by the Board of Directors of the Hawai'i State Bar Association.

(c) Law School Faculty. One (1) law school faculty member who is a full-time faculty member from the University of Hawai'i Richardson School of Law, chosen from a list of three (3) nominees recommended by the dean of the law school.

(d) Attorney Regulatory Entities. One representative each from (i) the Disciplinary Board of the Hawai'i Supreme Court, (ii) the Lawyers' Fund for Client Protection, (iii) the Attorneys and Judges Assistance Program, and (iv) the Board of Bar Examiners, chosen from a list of three (3) nominees recommended by the board and/or trustees of each respective entity.

(e) Public Members. Three (3) non-lawyer citizens active in public affairs.

(4) With the exception of the Chair of the Commission, the members of the Commission shall serve for a term of four (4) years provided, however, in the discretion of the chief justice, the initial appointments may be for a term of less than four (4) years so as to accomplish staggered terms for the membership of

the Commission. A Commissioner may be appointed for additional terms.

(5) A Commissioner who no longer meets the qualifications of this rule shall be deemed to have completed the Commissioner's term and the Commissioner's office shall be deemed vacant. Any vacancy on the Commission shall be filled by the chief justice, upon the concurrence of a majority of the justices of the supreme court, for the unexpired term.

(6) The Commission shall serve in an advisory capacity only, shall give continuing consideration to the enhancement of professionalism in the practice of law, and shall make reports and/or recommendations to the supreme court, annually, regarding implementation of the National Action Plan and any other relevant information regarding the work of the Commission.

(7) Commission members shall not receive compensation for their services, but may be reimbursed for travel and other expenses that are incidental to the performance of their duties.

(8) The Commission shall have no authority to impose discipline upon any members of the Hawai'i State Bar or to amend, suspend, or modify the Hawai'i Rules of Professional Conduct (HRPC). The Commission, however, may, if appropriate, recommend amendments to the HRPC to the supreme court for consideration.

IT IS FURTHER ORDERED, pursuant to the foregoing, that the following individuals are appointed as members of the Commission on Professionalism, effective immediately upon the filing of this order and for the term as specified below:

For a term expiring on March 13, 2007.

Hon. Karen Radius, First Judicial Circuit
Hon. Terence Yoshioka, Third Judicial Circuit
Hon. Daniel Foley, Appellate Court
Hon. Susan Oki Mollway, Federal Court
Susan Arnett, HSBA
Terence O'Toole, HSBA
Carol Muranaka, Lawyers Fund for Client Protection
Steven Dixon, Attorneys & Judges Assistance Program
Wesley Park, Public member

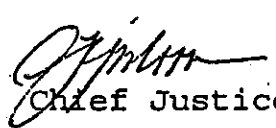
For a term expiring on March 13, 2009

Hon. Joseph Cardoza, Second Judicial Circuit
Hon. Trudy Senda, Fifth Judicial Circuit
Hon. Steven Levinson, Appellate Court
Calvin Young, HSBA
Michael Nauyokas, HSBA
Carol Mon Lee, Richardson School of Law
Carole Richelieu, ODC
Grace Nihei Kido, Board of Bar Examiners
Petra Bray, Public member
Nathan Nikaido, Public member

IT IS FINALLY ORDERED that the HONORABLE JAMES E. DUFFY, JR., is appointed as the Chief Justice's designee and shall serve as Chair of the Commission:

DATED: Honolulu, Hawai'i, March 14, 2005.

FOR THE COURT:


Chief Justice



Appendix “B”

MEMBERS OF THE COMMISSION ON PROFESSIONALISM

SUSAN ARNETT, ESQ. is a graduate of Kalani High School (1969), the University of Hawaii (1974) and the Catholic University of America Law School (1977). After working at the Legal Aid Society of Hawaii and five years of private practice, she joined the State Public Defender's Office in 1985. As a senior trial attorney in that office, she has done approximately 75 felony jury trials, including murder and class "A" felonies. She served as the supervisor of the Maui office from 1997 to 2001 and is now a Felony Trial Supervisor in the Honolulu office. She has supervised the planning and presentation of the annual week-long statewide Public Defender Advocacy Skills Training Program for the past 15 years. She also serves on the faculty of the Institute for Criminal Defense Advocacy program at California Western Law School. She is an adjunct professor at the William S. Richardson School of Law with the Hawai'i Innocence Project. She serves on the Hawaii Supreme Court Committee on Judicial Performance. She has served as a volunteer with the Hawaii Opera Theatre since 2002.

JUDGE JOSEPH CARDOZA is a judge of the Second Judicial Circuit Court, State of Hawai'i, and a current Vice President, Hawai'i State Trial Judge Association. He spent approximately a decade in private practice and a decade in government practice before becoming a judge. Judge Cardoza serves or has served as a continuing legal education instructor and as a volunteer with a variety of community organizations.

STEVEN B. DIXON, ESQ., a 1975 graduate of the University of Hawai'i at Hilo, has practiced law in small to medium sized law partnerships, and as a solo practitioner, on the Big Island since 1978. His areas of practice included real estate, business, tax and estate planning. He has also served as Principal Broker for Kohala Ranch, and the oldest and largest vacation ownership developer in the world, Fairfield Resorts, Inc. In December 2005, he succeeded retiring Director Peter Donahoe as Director of the Hawai'i Supreme Court Attorneys and Judges Assistance Program. He serves as a volunteer on the Hawai'i Medical Association Physician's Health Committee. An avid sailor, and author of Hawai'i sailing stories "The Hawaiian Voyages of the Ono Jimmy", he has served as Commodore of the Kona Sailing Club and is a member of the Hawai'i Yacht Club. He sailed to O'ahu and now lives on his CSY '44 cutter rigged sailing vessel in the Ala Wai Harbor.

ASSOCIATE JUSTICE JAMES E. DUFFY, JR. is an Associate Justice of the Hawai'i Supreme Court. Justice Duffy was a founding member of the firm Fujiyama, Duffy & Fujiyama, a practicing trial lawyer (representing both plaintiffs and defendants), mediator, arbitrator, and special master. Justice Duffy is a past President of the Hawai'i State Bar Association, and is a member of the American College of Trial Lawyers, the American Board of Trial Advocates, and the American Inn of Court.

LYN FLANIGAN, ESQ. After obtaining her M.A. in Asian Studies, Lyn worked in international education at the East West Center. She obtained her J.D. from the William S. Richardson School of Law (University of Hawaii) and clerked for both the U.S. Bankruptcy Court and the U.S. District Court in Hawaii. Lyn then moved to private practice in the areas of bankruptcy and workouts with Goodsell Anderson Quinn & Stifel in Honolulu. Lyn subsequently served for seven years as Senior Counsel/Corporate-Investments for the Kamehameha Schools/Bishop Estate Trust, after which she served for over five years as General Counsel and Corporate Secretary of Hawaiian Airlines. She joined the HSBA as Executive Director in September 2003. Lyn is active in community organizations in Honolulu, having served on the East West Center Board of Governors and the Manoa Dog Coalition, and is currently serving on the East West Center Alumni Board, the East West Center Foundation Board, the Board of the Red Cross of Hawaii, the Board of the YWCA of Oahu, and the Friends of the WSR Law School. Lyn spends her free time hiking with her two chocolate labs, is an aspiring yogi, swims frequently and enjoys travel, reading and movies.

ASSOCIATE JUDGE DANIEL R. FOLEY has been an Associate Judge at the Intermediate Court of Appeals, State of Hawai'i, since October 2000. He received his B.A. in 1969 and his J.D. in 1974 from the University of San Francisco. Prior to his appointment as a judge, he was a partner for eleven years in the law firm of Partington & Foley where he handled federal and state civil rights cases. He also was an Adjunct Professor of Civil Rights at the William S. Richardson School of Law. From 1984 to 1987 Judge Foley was legal director of the American Civil Liberties Union of Hawai'i, and from 1975 to 1983 he was counsel to various Micronesian governmental bodies, constitutional conventions, and organizations.

DAVID W. HALL, ESQ. has been a solo practitioner since 1993 in areas including criminal defense, civil litigation and juvenile law. He received a B.A. in political science from Yale University in 1961, served in the Naval Reserve on active duty from 1961-1966 and received his J.D. from the George Washington University's National Law Center in 1971. He served as a Hawaii deputy public defender in 1971 and has been in private practice since 1971. He served on the Act 59 Task Force 2004-5 and has served as a CAAP Arbitrator since 1986 and on the Hawaii Supreme Court's Standing Committee on the Rules of Evidence since 1990.

GRACE NIHEI KIDO, ESQ. is a partner in the Finance and Real Estate Department of Cades Schutte, LLP. She is also the Chairperson of the firm's Recruiting Committee and a member of the Summer Program Committee. Ms. Kido obtained her B.A. with distinction from the University of Hawai'i in 1977, and her law degree from the University of Hawai'i William S. Richardson School of Law in 1985, following a five-year

career in Human Resources Management in the hotel industry. While at the University of Hawai'i earning her law degree, Ms. Kido was the casenotes editor and a member of Law Review and was a finalist in the school's Moot Court competition. Ms. Kido has been a member of the Board of Examiners of the Hawai'i Supreme Court since 1994; is the current Treasurer and has been on the Board of Directors of the Real Property and Financial Services Section of the Hawai'i State Bar Association since 2000; is a Fellow of the American College of Mortgage Attorneys; and is a former director of the William S. Richardson School of Law Alumni Association and of the Young Lawyer's Division of the Hawai'i State Bar.

GAYLE J. LAU, ESQ. presently serves as Regulatory Officer with the Hawaii Credit Union League. He previously served as Assistant United States Trustee with the U.S. Department of Justice, overseeing the administration of bankruptcy cases. Mr. Lau received his Bachelor's degree from the University of Southern California, his Master's of Business Administration from the University of Hawaii and his Juris Doctorate from the University of the Pacific, McGeorge School of Law. His bar activities include serving as a trustee of the Lawyers' Fund for Client Protection and a member of the committee to revise the Hawaii Rules of Professional Conduct.

ASSOCIATE JUSTICE STEVEN H. LEVINSON (Hawai'i Supreme Court Liaison to Committee) has been an Associate Justice of the Hawai'i Supreme Court since 1992. He is the Court's liaison to HSBA, ODC, the Disciplinary Board, the Lawyers' Fund for Client Protection, and the Hawai'i Justice Foundation. Before his appointment to the Supreme Court, Justice Levinson practiced law for almost 17 years, concentrating in personal injury and commercial litigation, and he was a First Circuit Court judge, assigned to the criminal division, for three years.

JUDGE SUSAN OKI MOLLWAY was born and raised in Hawai'i. She received her bachelor's and master's degrees in English literature from the University of Hawai'i, and graduated cum laude from Harvard Law School, where she was the editor in chief of the Harvard Civil Rights-Civil Liberties Law Review. Nominated by President Clinton, Susan Oki Mollway became a United States District Judge for the District of Hawai'i in 1998. Before becoming a judge, she was a partner at the Honolulu law firm of Cades Schutte, where she concentrated in commercial litigation. One of her cases reached the United States Supreme Court, where she argued successfully. In 1998, Judge Mollway received the Trailblazer Award from the National Asian Pacific American Bar Association. She was named the Outstanding Woman Lawyer of the Year in 1987 by the Hawai'i Women Lawyers and was the 1999 Edith House Lecturer at the University of Georgia School of Law. She was recently awarded the 2004 Outstanding Judicial Achievement Award by the Hawai'i Women Lawyers.

MICHAEL F. NAUYOKAS, ESQ. has mediated over 900 employment, labor, personal injury insurance, bad faith, Jones Act, longshore, commercial, products liability, construction, workers' compensation and other disputes in Honolulu and has been selected as an arbitrator in over 150 more. Over 99% of the cases he mediated were settled in one day. All but three subsequently settled. He has a boutique law practice specializing primarily in mediation and arbitration and employment and labor law. Mr. Nauyokas holds an "AV" rating (the highest possible) under the Martindale-Hubbell Rating System, is named in the Martindale-Hubbell Bar Register of Preeminent Lawyers, is named in The Best Lawyers Guide and The Best Lawyers in America, and has been featured in Honolulu Magazine's "Best Lawyers in Hawai'i" and Midweek's "Newsmakers." He is a Fellow of the American College of Civil Trial Mediators and member of the United States District Court Mediation Committee for the District of Hawai'i.

Mr. Nauyokas is a frequent lecturer on numerous topics in mediation, arbitration, employment and labor law areas. Mr. Nauyokas has taught numerous courses in Negotiation, and Employment & Labor Law at the University of Hawai'i and Hawai'i Pacific University. He has appeared as an expert on ADR and Employment Law on numerous television and radio shows. Among the numerous organizations he has served as a lecturer are: The U.S. Department of Labor, the EEOC, the Office of Federal Contract Compliance Programs (OFCCP), the Society for the Professionals in Dispute Resolution (now ACR), National Employment Lawyers Association ("NELA"), the American Arbitration Association, the Society for Human Resource Management, and the Hawai'i Employers Council.

NATHAN NIKAIDO, a 1978 graduate of the University of Hawai'i (B.A., Economics). 1978-1983 Masters degree program, Urban and Regional Planning. (Use of mediation in the resolution of land use disputes). 1982-present, volunteer mediator, The Mediation Center of the Pacific. Approximately 1,600 cases mediated at District Court. 1985-present, Accountant, The Mediation Center of the Pacific. 2004 Liberty Bell award recipient, Hawai'i State Bar Association.

TERENCE O'TOOLE, ESQ. is an alumni of UC Berkeley, Boalt Hall School of Law and was admitted to the California Bar in 1971, the Hawai'i Bar in 1972 and the D.C. Bar in 1989. He is a director of the law firm Starn O'Toole Marcus & Fisher and has over twenty-five years experience in the area of commercial and complex litigation, with an emphasis in construction claims and disputes representing owners, contractors and design professionals. Mr. O'Toole co-authored an article for the Hawai'i Bar Journal that has been republished in the "Giants" of the Trial Bar V: Cross-Examination of Expert Witness. He has also organized and spoken at various professional seminars and legal conferences in California, Hawai'i and Singapore on construction claims. Mr. O'Toole was named in "Best Lawyers in America."

WESLEY T. PARK served Hawai'i Dental Service as its former President and CEO from 1995-2001. Currently, he is president of Maunawili Consulting. Mr. Park holds a bachelor's and master's of education degree from the University of Hawai'i, IMLE certificate from Harvard University, and an Honorary Doctor of Philosophy degree from Hong-ik University in Korea. He served as Captain in the U.S. Air Force and was on active duty from 1960-1965. He was Vice-President for Administration at the East-West Center, Dean Emeritus for the College of Continuing Education and Community Service at UH, and Director of the Small Business Management Program at UH. Mr. Park has also served on the boards of many businesses and organizations including the Honolulu Academy of Arts, Coalition for a Drug-Free Hawai'i, First Hawaiian Bank, Korean Chamber of Commerce, Honolulu Symphony Society, Verizon Hawai'i, and Rehabilitation Hospital of the Pacific.

JUDITH ANN PAVEY, ESQ. has been in the private practice of law since 1978. Her practice is concentrated on litigation, primarily plaintiff personal injury but with extensive criminal defense and some corporate litigation. A graduate of Purdue University (B.A.) and Indiana University (J.D.), Judy is a member of the American Board of Trial Advocates, American Inns of Court, and the Consumer Lawyers of Hawaii.

JUDGE KAREN M. RADIUS graduated from the George Washington University National Law Center in Washington D.C. in 1974. After being admitted to the Hawai'i Bar that same year, she began work with the Legal Aid Society of Hawai'i as a staff attorney. From 1974-1979, she served in numerous capacities with the Legal Aid Society including that of supervising attorney of the Waianae Legal Aid office and acting Executive Director. In 1980, Judge Radius established the law firm of Radius & Lau that continued until she was appointed to the Family Court bench as a per diem judge in 1993. In 1994, she was appointed as a full time Family Court judge. She has served in each of the divisions of the Family Court, including being lead of the Domestic Division handling divorces, child custody, support and property division cases. In 2001, she was the founding judge of the new Hawai'i Juvenile Drug Court.

JILL J. RAMSFIELD. Ms. Ramsfield is a Professor of Law and Director of Legal Research and Writing at the William S. Richardson School of Law. Professor Ramsfield was previously a tenured faculty member at Georgetown University Law Center. Professor Ramsfield is a graduate of Wellesley College (B.A.) and the University of Wisconsin (B.S., J.D.). In addition to her law school teaching, Professor Ramsfield teaches continuing legal education courses nationally and internationally, helping lawyers to write better, faster. Her clients include law firms, government agencies, judges, and magistrates. She has developed a specialty working with individual attorneys to create techniques uniquely suited to their styles and law practices. Professor Ramsfield is the author of, among other publications, *Is Logic*

Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom 47 J. LEGAL ED. 157 (1997); *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (West 2000); *CULTURE TO CULTURE: A GUIDE TO U.S. LEGAL WRITING* (Carolina Academic Press 2005); and co-author with Mary Ray of *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (West 4th ed. 2005).

CAROLE R. RICHELIEU, ESQ. is Chief Disciplinary Counsel of the Office of Disciplinary Counsel and Fund Administrator for the Lawyers' Fund for Client Protection. She received her B.A. degree with High Honors from the University of Hawai'i in both Pre-Law (Criminology) and Psychology and her J.D. degree from the William S. Richardson School of Law. She engaged in civil litigation practice and served as a member of the Medical Claims Conciliation Panel and arbitrator for the Better Business Bureau before joining ODC in 1989.

She has made numerous presentations on legal ethics and client protection to law firms, law students, legal professionals, and the public, as well as authored many articles and contributed to various manuals. Currently, she is a member of the Hawai'i Supreme Court's Commission on Professionalism, as well as co-chair on the Hawai'i Supreme Court's course on professionalism. Formerly, she was a co-chair of Hawaii's Chief Justices' National Action Plan which produced the first report in the nation. She has served as a Supreme Court appointee to the Committee to Review the Code of Judicial Conduct, the Committee on the Certification of Legal Specialists, and the Committee on Unbundling Legal Services/Unauthorized Practice of Law and continues to serve on the Board of Examiners.

She is a Bencher with the American Inn of Court and a notary, and a member of the ABA, HSBA, National Organization of Bar Counsel (NOBC), National Client Protection Organization (NCPO), and the ABA Center for Professional Responsibility. She was appointed by the ABA to serve on the ABA's Advisory Commission on Lawyers' Funds for Client Protection (2000-2001) and Chair the ABA's Advisory Commission on Lawyers' Funds (2001-2002). A former Vice-President of NCPO, she is now President and continues to serve as NCPO's liaison to the ABA and the ABA Center Coordinating Council, as well as on NCPO's Trustee Training Project. She has served on the Nominating Committees of both NOBC and NCPO. She also represented the United States on an International Bar Association client protection panel in October 2004.

She also serves on the HSBA's Goal Group 2 (which promotes the integrity and competency of Hawai'i lawyers) and the Task Force on Public Protection, and is liaison with HSBA, as well as served on the Subcommittee on Disciplinary Rules for the Standing Committee on Lawyer Competence and various other committees.

JUDGE TRUDY SENDA has been a judge of the District Court of the Fifth Circuit since May 2001. Prior to that, she was in private practice for 17+ years in Honolulu and Kauai. She currently serves as the acting deputy chief judge for the circuit regarding matters involving the District Court's jurisdiction over criminal, traffic and civil matters.

KEVIN K. TAKATA, ESQ. graduated from Case Western University School of Law. He was an associate with Oliver, Cuskaden & Lee from 1984 to 1987, general civil practice; Honolulu Deputy Prosecuting Attorney from 1987 to present; member of the Homicide Team from 1990 to 1996; Trials Division Chief from 1997 to 2006. He handles primarily homicide cases. He lectures in various areas of criminal prosecution to other prosecutors, police and law enforcement groups. He is an instructor at the National Advocacy Center, a national training center for prosecutors and district attorneys.

JUDGE TERENCE T. YOSHIOKA has been a District Family Court judge since April 28, 2000. He graduated from the University of Washington School of Law in 1969 and the University of Hawai'i in 1966. He was a former partner of Nakamoto, Yoshioka and Okamoto, a Law Corporation.

CALVIN E. YOUNG, ESQ., a partner with Ayabe Chong Nishimoto Sia & Nakamura, is a 1982 graduate of the William S. Richardson School of Law. His practice concentrates on cases involving professional liability, aviation and product liability. Mr. Young was a member of the Disciplinary Board of the Hawai'i Supreme Court from 1995 to 2001 and since 2002 is the Chair of the HSBA Committee on Professional Responsibility.

Appendix “C”

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of September 1, 2006

2:30 P.M. - 3:45 P.M.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Judge Joseph Cardoza, Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley, Carol Mon Lee, Associate Justice Steven Levinson, Judge Susan Oki Mollway, Carol Murañaka, Nathan Nikaido, Franklin Pacarro, Terence O'Toole, Wesley Park, Judge Karen Radius, Carole Richelieu, Judge Trudy Senda, Judge Terence Yoshioka, and Calvin Young

HANDOUTS: (1) Hawai'i Supreme Court Order Approving Referral Agencies dated April 11, 2006
(2) 2006-2007 Projects Requested by the Hawai'i Supreme Court
(3) Draft of proposed revision to Rule 16.1 of the Rules of the Supreme Court of Hawai'i

I. WELCOME AND ANNOUNCEMENTS

Associate Justice James E. Duffy, Chair, welcomed the members to the first meeting of the Commission's second year of existence, and thanked the members for attending, with special thanks to the neighbor island members.

Justice Duffy made two announcements:

1. Franklin "Don" Pacarro of the Prosecutor's Office is standing in today for Kevin Takata, who is in trial; and
2. Susan Arnett of the Public Defender's Office is not here, but has a good excuse: she is in Tuscaloosa, Alabama for the Rainbow Warriors' football game tomorrow!

II. RESPONSE OF CHIEF JUSTICE MOON TO THE COMMISSION'S FIRST REPORT OF THE HAWAI'I SUPREME COURT DATED MARCH 10, 2006

Justice Duffy related that Chief Justice Moon and the Associate Justices were very pleased with the work of the Commission as detailed in its First Report. As a result, the Chief Justice has high expectations for the work to be done by the

Commission in its second year! Justice Duffy further related the status of the three recommendations made by the Commission in its First Report:

1. The Hawai'i Supreme Court accepted the Commission's recommendation that the January 23, 1996 "Order Approving Referral Agencies" regarding referral of minor misconduct matters to nondisciplinary proceedings be amended and issued an Order Approving Referral Agencies dated April 11, 2006;
2. The Hawai'i Supreme Court put the Commission's recommendation that RSCH 2.24 entitled "Audit of trust accounts" be amended out for public comment; and
3. The Hawai'i Supreme Court accepted the Commission's recommendation that Hawai'i not adopt mandatory continuing legal education at this time, and agreed with the Commission's suggestions for projects involving Professionalism and Ethics, and Continuing Legal Education (see section III projects nos. 2-5).

III. 2006-2007 PROJECTS REQUESTED BY THE HAWAI'I SUPREME COURT

Justice Duffy related that the Hawai'i Supreme Court has requested that the Commission undertake the following projects in 2006-2007:

1. Recommendation re adoption of ABA Model Insurance Disclosure Rule.
2. Creation of a mandatory refresher course on Professionalism and Ethics, to be presented by Internet access, with an interactive component, and quiz.
3. Presentation at a Judicial Education Conference re what judges can do to encourage professionalism in their courts.
4. Presentation to HSBA members re professionalism and what judges expect of attorneys appearing in their courts.
5. Create a question for inclusion on the Attorneys' Annual Registration Form inquiring as to what CLE programs the attorney would like to see offered.

IV. REPORT OF COMMITTEE RE ADOPTION OF ABA MODEL INSURANCE DISCLOSURE RULE

Committee Co-Chair Terry O'Toole related that he met with Carroll Taylor of the Ethics 2000 Committee which has been reviewing the issue of insurance disclosure. Lyn Flanigan related that this issue had previously been presented to the HSBA and was voted down. Justice Duffy related that 17 states now have some form of mandatory insurance disclosure provision, and a California task force is recommending that some form of a disclosure rule be adopted. Carole Richelieu related that the Ethics 2000 Committee is now reviewing a form of insurance disclosure which may be different from the one previously presented to the HSBA. Terry O'Toole and Co-Chair Wesley Park will meet with Carroll Taylor and try to coordinate a working relationship on this issue of mutual concern.

V. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION RE:

- A. Creation of a mandatory refresher course on Professionalism and Ethics, to be presented by Internet access, with an interactive component, and quiz.

Judge Foley related that he and Calvin Young had discussed this project with Lyn Flanigan and her staff at the HSBA. Judge Foley reported the HSBA is committed to working with his committee and the commission in submitting a proposal for this project early next year. Judge Foley and Calvin also discussed this project with the HSBA CLE committee which supports this project. CLE committee members Carol Mon Lee and Hazel Beh explained the law school was now building ethics and professionalism into its courses, i.e. family law, wills and trusts. Judge Foley stated the HSBA CLE program was also including ethics and professionalism components in the courses it will be offering. Lyn Flanigan related that the HSBA will also be presenting a program on December 1, 2006 on Professionalism and Ethics, with a dynamic speaker from the mainland. Lyn related that Commission members may be asked to participate in panel presentations as part of this program.

- B. Presentation (1) at a Judicial Education Conference re what judges can do to encourage professionalism in the courts, and (2) to HSBA members re professionalism and what judges expect of attorneys appearing in their courts.

Judge Foley related that his committee was pursuing these projects. His committee has asked committee member Judge Yoshioka to take

the lead given his initiatives in insisting upon professionalism from attorneys appearing in his court. Judge Yoshioka agreed to do so. Judge Yoshioka stated that he perceived professionalism problems not only between judges and attorneys, and attorneys vs. attorneys, but also between attorneys and their clients. He suggested that the Trial Judges Association may be interested in establishing a program. Judge Radius indicated that the Family Court judges would be interested in such a program.

- C. Create a question for inclusion on the Attorneys' Annual Registration Form inquiring as to what CLE programs the attorney would like to see offered.

Lyn Flanigan related that creating such a question would be feasible with the HSBA technology which now enables members to vote on-line in HSBA elections, etc. Lyn stated she would follow through on this.

VI. REPORT OF JOINT COMMITTEE ON LAWYER REGULATION AND REMEDIAL PROGRAMS RE IMPLEMENTATION OF "ORDER APPROVING REFERRAL AGENCIES" ISSUED BY THE HAWAII SUPREME COURT ON APRIL 11, 2006 RE MINOR MISCONDUCT

Justice Duffy stated that he was unaware of whether the Order Approving Referral Agencies dated April 11, 2006 regarding referral of minor misconduct matters for non-disciplinary proceedings had been implemented by the ODC and the HSBA. Steve Dixon of the Attorneys and Judges Assistance Program (AAP) related that there have been four referrals to AAP since the amended order was in place, and that he and the ODC were working very well together. Lyn Flanigan related that the HSBA was working with Calvin Young on a program to implement minor misconduct referrals under the amended rule.

VII. NEW BUSINESS

Steve Dixon requested that the Commission recommend that the Hawaii Supreme Court amend its Rule 16.1 ("Purpose; scope" of the Attorneys And Judges Assistance Program) to include law students at the U.H. Richardson School of Law as the present language includes only lawyers and judges, as experience nationwide has shown that law students are also in need of assistance for impairment. Steve distributed a draft of a proposed rule revision. The consensus was that the Commission should recommend that the Hawaii Supreme Court consider this amendment. Justice Levinson indicated that the Hawaii Supreme Court could consider the proposed rule revision on an expedited basis.

Steve Dixon also raised the question about what he could do in the situation where he is aware of an attorney's psychological problems that could cause harm to a future client or clients. Since it appears that the confidentiality rules of the AAP prevents him from disclosing that information to ODC, he queried whether there was anything that could be done. After discussion, the consensus appeared to be that the confidentiality rules would prevent such disclosure, but that this is a troublesome issue which should be further studied.

VIII. NEXT MEETING

Justice Duffy related that our goal this year is to have our Second Report to the Hawai'i Supreme Court delivered to the Court on or before March 14, 2007, the second anniversary of the establishment of the Commission. Since most of the work will be done in committees, Justice Duffy suggested that our next Commission meeting be in early January, 2007. In the meantime, the committees are encouraged to meet and work on the projects so that we don't have a crunch at the end. Aloha!

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of February 9, 2007

2:30 p.m. - 3:45 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Judge Joseph Cardoza, Lyn Flanigan, Associate Judge Daniel Foley, Grace Kido, Associate Justice Steven Levinson, Judge Susan Oki Mollway, Carol Muranaka, Michael Nauyokas, Nathan Nikaido, Terence O'Toole, Wesley Park, Jill Ramsfield, Judge Trudy Senda, Kevin Takata, and Judge Terence Yoshioka
Special Guest: Carroll Taylor

HANDOUTS:

- (1) Agenda
- (2) Amended Order Amending Rule 16 of the Rules of the Supreme Court of the State of Hawai'i dated December 18, 2006
- (3) Amended proposed amendment to Rule 2.24 of the Rules of the Supreme Court of the State of Hawai'i in response to comments received from the HSBA and Bar members in response to the prior draft of Rule 2.24 put out for Bar and public comment
- (4) Recommendation of Committee re Adoption of ABA Model Insurance Disclosure Rule

I. WELCOME AND ANNOUNCEMENTS

Associate Justice James E. Duffy, Jr., Chair, welcomed Professor Jill Ramsfield of the U.H. William S. Richardson School of Law as a new member of the Commission. Professor Ramsfield, formerly on the faculty of the Georgetown Law Center, is Director of Legal Research and Writing at the U.H. Law School. Justice Duffy also welcomed attorney Carroll Taylor as a special guest of the Commission. Mr. Taylor has worked closely with the Commission's Committee on Insurance Disclosure and has extensive experience with the Hawai'i State Bar Association (HSBA) committee on insurance disclosure and professional insurance matters.

Justice Duffy thanked Carol Mon Lee, recently retired from U.H. Law School, for her years of service to the Commission.

Justice Duffy related that Carole Richelieu and Steve Dixon were unable to attend the meeting as they are representing their respective organizations at the mid-year meeting of the American Bar Association.

II. REPORT ON ACTION TAKEN BY THE HAWAI'I SUPREME COURT IN RESPONSE TO THE COMMISSION'S RECOMMENDATION THAT SUPREME COURT RULE 16.1 ("PURPOSE; SCOPE" OF THE ATTORNEYS AND JUDGES ASSISTANCE PROGRAM) BE AMENDED TO INCLUDE LAW STUDENTS AT THE U.H. RICHARDSON SCHOOL OF LAW

In our last meeting on September 1, 2006, Steve Dixon, Director of the Attorneys and Judges Assistance Program, asked the Commission to consider amending Supreme Court Rule 16.1 to include students at the U.H. Law School. The Commission agreed to do so, and the recommendation was made to the Supreme Court. The Supreme Court accepted the recommendation, and an Amended Order Amending Rule 16 was filed on December 18, 2006 making the amendment effective January 1, 2007. See handout.

III. RECOMMENDATION RE PROPOSED AMENDMENT TO SUPREME COURT RULE 2.24 ("AUDIT OF TRUST ACCOUNTS") IN RESPONSE TO COMMENTS RECEIVED FROM THE HSBA AND BAR MEMBERS

In the Commission's First Report to the Supreme Court dated March 10, 2006, the Commission recommended that Supreme Court Rule 2.24 be amended to shift the cost of an audit of the attorney's trust account to the attorney audited unless there is clear and convincing evidence that the financial institution erred. The amendment was requested by the Office of Disciplinary Counsel, which asserted that it was spending a significant portion of its time and budget resources on audits arising out of attorney's mishandling of client trust account funds. A draft of the proposed amended rule was submitted to the Supreme Court, which put the proposed amendment out for public comment. In response, the Supreme Court received four comments from (1) the HSBA, (2) the Disciplinary Board of the Supreme Court, (3) the Collection Law Section of the HSBA, and (4) one private attorney. The Supreme Court forwarded the comments to the Commission for response, if any. In an attempt to address the concerns expressed in the comments received, Justices Levinson and Duffy drafted an Amended proposed amendment to Rule 2.24.

There was extensive discussion about the amended draft language, particularly with the phrase "non-culpable error." Members expressed concern that the phrase was ambiguous and could provide inadequate guidance to the Disciplinary Counsel. Among the suggestions offered regarding this concern:

(1) the addition of a commentary to the amended rule may be helpful in clarifying the meaning of "non-culpable error" and the intent of the phrase; (2) "non-culpable error" could be accompanied by "de minimus"; and (3) "de minimus error" could be substituted for "non-culpable error." A question was raised as to the standard of review to be applied on appeal, and the members agreed that a "de novo" standard should be written into the rule. Questions were also asked regarding whether an attorney would be allowed to continue practicing pending completion of an audit and whether inability or failure to pay for an audit would result in suspension of the attorney. While no definitive answers to these questions could be given, it is anticipated that these issues will be addressed in the operating rules of the Disciplinary Counsel which are presently being revised. The members also suggested that Carole Richelieu's input on the proposed amended draft should be solicited. In any event, the Commission agreed to forward the proposed amended draft to the Supreme Court, together with the concerns and suggestions discussed above.

IV. RECOMMENDATION OF COMMITTEE RE ADOPTION OF ABA MODEL INSURANCE DISCLOSURE RULE

Mandatory Insurance Disclosure

The subcommittee on this issue, which consists of Wesley Park, Terry O'Toole, Carole Richelieu and Carroll Taylor (*ex officio*), submitted draft recommendations to the Commission which recommendations would require mandatory insurance disclosure on the HSBA Annual Registration Statement and also, if the attorney did not have insurance, direct written disclosure from the attorney to the client of this fact.

Terry O'Toole noted at the outset of the presentation that his office had failed to transmit to Justice Duffy and to the members of the Commission the subcommittee's proposed draft language modifying Rule 17 of the Rules of the Supreme Court of Hawaii (RSCH) which would require insurance disclosure on the Annual Registration Statement. Accordingly, the Commission did not have this information before it at the time of the February 9, 2007 meeting. Mr. O'Toole advised that he would circulate this information after the meeting.

Mr. O'Toole further advised the Commission that the HSBA wanted to have an opportunity to provide input on these proposed changes before the Commission took any final action.

In addition, there was not sufficient time at the February 9, 2007 Commission meeting to discuss the subcommittee's proposals in detail.

Accordingly, and after discussion, the Commission agreed to follow Carroll Taylor's recommendation that the Commission first focus this year on the subcommittee's recommendation to amend RSCH Rule 17 which would require disclosure on the Annual Registration Statement; and, thereafter consider whether the subcommittee's proposed amendment to Rule 1.4 of the Hawaii Rules of Professional Conduct (HRPC), requiring direct written disclosure from attorney to client, would be appropriate.

Justice Duffy expressed his desire to have the Commission move all of its initiatives forward in a timely manner so that they could be presented to Chief Justice Ronald Moon for consideration and further input.

With Justice Duffy's concern in mind, the Commission agreed to proceed as follows:

1. Before the next Commission meeting in May 2007, the subcommittee would coordinate with the HSBA and obtain any input the HSBA and its members may have on the above proposed amendments to RSCH 17 and HRPC 1.4;
2. Similarly, the subcommittee would distribute to Commission members the draft language amending RSCH 17 which had not been provided to Commission members before the February 9, 2007 meeting;
3. By the next Commission meeting in May 2007, the subcommittee would focus first on RSCH 17 (Annual Registration); make any further suggested refinements to it; and, distribute it for discussion and hopefully adoption at the May 2007 meeting;
4. The subcommittee would also continue to work on the draft language to HRPC 1.4 (direct written disclosure to the client).

V. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION RE:

- A. Creation of a mandatory refresher course on Professionalism and Ethics, to be presented by Internet access, with an interactive component, and quiz.**

Judge Foley reported that Calvin Young and Lyn Flanigan have been meeting regarding creation of this course. Lyn Flanigan related that the HSBA has a video of last year's mandatory Professionalism course, and

that the HSBA now has the technical capability to present the interactive component and quiz.

- B. Presentation (1) at a Judicial Education Conference re what judges can do to encourage professionalism and (2) to HSBA members re professionalism and what judges expect of attorneys appearing in their courts.**

Judge Yoshioka reported that he has appointed sub-committee judicial chairs on each island as each jurisdiction may have different problems to address. Judge Yoshioka's goal is to gather survey information from each of his chairs, and then jointly prepare a Bench Book which would serve as the basis for the presentations to the Judiciary and the HSBA.

- C. Create a question for inclusion on the Attorneys' Annual Registration Form inquiring as to what CLE programs the attorney would like to see offered.**

Lyn Flanigan reported that the HSBA now has the software to present such a question on the annual registration form, although it would not be mandatory for the attorney to answer the question.

VI. COMMISSION'S SECOND REPORT TO THE HAWAI'I SUPREME COURT

Justice Duffy suggested waiting to prepare the Commission's Second Report until after the May meeting as we will have the written recommendation of the Committee Re Adoption of ABA Model Insurance Disclosure Rule to discuss in the May meeting and the Commission will be asked to take a position on the recommendation in that meeting.

VII. NEW BUSINESS

No new business was discussed.

VIII. NEXT MEETING

The next meeting will be in May, 2007. A specific date will be set as soon as possible after determining the availability of the Supreme Court conference room and consulting with Commission members.

HAWAI'I SUPREME COURT COMMISSION ON PROFESSIONALISM

Meeting of May 25, 2007

2:40 p.m. - 3:50 p.m.

Supreme Court Conference Room

MINUTES

PRESENT: Chair: Associate Justice James E. Duffy, Jr.
Members: Susan Arnett, Steven Dixon, Lyn Flanigan, Associate Judge Daniel Foley, Gayle Lau, Associate Justice Steven Levinson, Nathan Nikaido, Terence O'Toole, Wesley Park, Carole Richelieu, Judge Trudy Senda, Kevin Takata, and Calvin Young
Special Guest: Carroll Taylor

HANDOUTS: (1) Agenda
(2) Biographies of David W. Hall, Esq., Gayle J. Lau, Esq., and Judith Ann Pavey, Esq.
(3) Contact Sheet
(4) Letter from Jeffrey S. Portnoy, President of Hawai'i State Bar Association (HSBA), to Justice James E. Duffy, Jr., dated May 15, 2007
(5) E-mail from Terry O'Toole to Justice Duffy dated May 18, 2007, with proposed revisions to Rule 17 of the Rules of the Supreme Court of Hawai'i and the Code of Professional Responsibility
(6) E-mail from Lyn Flanigan, Executive Director of HSBA, to all Commission members dated May 21, 2007 with alternative proposed amendment to Rule 17

I. WELCOME AND ANNOUNCEMENTS

Associate Justice James E. Duffy, Jr., Chair, welcomed three new members to the Commission: Gayle J. Lau, Esq., Judith Ann Pavey, Esq. and David W. Hall, Esq. Justice Duffy also welcomed special guest Carroll Taylor who is assisting the Commission's Committee on Insurance Disclosure.

Justice Duffy thanked outgoing Commission member Carol Muranaka for her years of service to the Commission and announced that Carol has graciously volunteered to continue assisting on Commission projects.

II. AMENDMENT OF RSCH 2.24 ("AUDIT OF TRUST ACCOUNTS")

In our last meeting on February 9, 2007, there was extensive discussion about the proposed amended draft language shifting the cost of an audit of an attorney's trust account to the attorney audited. Following discussion, the Commission agreed to forward the proposed amended draft to the Supreme Court, together with the concerns and suggestions of the members. Justice Duffy related that the Supreme Court staff attorneys reviewed the draft, concerns and suggestions, and prepared a revised draft amendment of RSCH 2.24. The revised draft will be discussed by the Supreme Court in its next conference.

III. COMMITTEE RE "OF COUNSEL" RELATIONSHIPS

Since our last meeting, Chief Justice Ronald T.Y. Moon requested that the Commission examine the nature of "Of Counsel" relationships in this jurisdiction and recommend whether such relationships should be defined in the Rules of the Supreme Court or the Hawai'i Rules of Professional Conduct. Carole Richelieu agreed to chair a committee to examine this issue, as the ODC previously issued Formal Opinions No. 43 (3/28/02) and Amended Formal Opinion No. 43 (4/24/03) dealing with "Of Counsel" relationships. Justice Duffy asked that any Commission member willing to work on this project contact Carole, and also asked Lyn Flanigan for a list of HSBA members (need not be Commission members) willing to be on this committee, as the committee's recommendation could have ramifications for HSBA members, law firms, and the public.

IV. REPORT OF COMMITTEE RE MANDATORY CONTINUING LEGAL EDUCATION

Calvin Young related the following committee reports re A and B.

A. Creation of a mandatory refresher course on Professionalism and Ethics, to be presented by Internet access, with an interactive component, and quiz.

Representatives of the Commission committee will meet with Lyn Flanigan and the CLE and Professional Responsibility committees of the HSBA to discuss creation, content, length, logistics, etc. of such a course.

- B. Presentation (1) at a Judicial Education Conference re what judges can do to encourage professionalism and (2) to HSBA members re professionalism and what judges expect of attorneys appearing in their courts.**

Judge Terence Yoshioka is working with his sub-committee judicial chairs on each island, and anticipates being ready to make a presentation at the next Judicial Conference (Fall 2007) or the following conference (Spring 2008).

- C. Create a question for inclusion on the Attorneys' Annual Registration Form inquiring as to what CLE programs the attorney would like to see offered.**

Lyn Flanigan reported that the HSBA's annual attorney registration process has been placed on-line and any change to the form would require programming costs. As an alternative, Lyn suggests that the HSBA gather the requested information from a poll or survey utilizing available software.

V. RECOMMENDATION OF COMMITTEE RE ADOPTION OF MANDATORY INSURANCE DISCLOSURE RULE

At our last meeting on February 9, 2007 the subcommittee on this issue (Wesley Park, Terry O'Toole, Carole Richelieu and Carroll Taylor (ex officio)) submitted draft recommendations to the Commission requiring both mandatory insurance disclosure on the HSBA Annual Registration Statement and direct written disclosure from the attorney to the client. After extensive discussion, the Commission agreed to follow Carroll Taylor's recommendation that the Commission first focus this year on the subcommittee's recommendation to amend RSCH Rule 17 which would require disclosure on the Annual Registration Statement and thereafter, after having reviewed the information gathered, consider whether requiring written disclosure from the attorney to the client would be appropriate. The Commission further requested that the subcommittee meet with the HSBA on this subject and seek its input before the next Commission meeting.

The subcommittee reported that it did meet with the HSBA, and that, after discussion, the HSBA was in support of the subcommittee's recommendation for mandatory disclosure of professional liability insurance by HSBA members on the HSBA Annual Registration Statement (see letter dated May 15, 2007 from Jeffrey S. Portnoy, HSBA President, to Justice Duffy, in hand-outs). The subcommittee further provided proposed revisions to RSCH 17(d)(1) regarding

mandatory disclosure on the attorney registration statement for implementation this year (if approved by the Hawai'i Supreme Court), together with proposed revisions to the Rules of Professional Conduct requiring attorneys to disclose in writing to their clients if they do not have professional liability insurance (not to be implemented this year).

After extensive discussion, the Commission members voted (by secret ballot) 12-2 in favor of the revised proposed amendment to RSCH 17(d)(1). The revisions to the circulated draft were suggested by Wesley Park, and consisted of the following:

1. Rule 17(d)(1)(ii)(2): deletion of last sentence: "The Hawai'i State Bar will identify each individual member who certifies that he or she is not covered by professional liability insurance by making that information publicly available upon inquiry and on the State Bar's website or by a similar method."
2. Rule 17(d)(3): deletion of "including professional liability insurance certification" in first sentence.

The revised proposed amendment to RSCH 17(d)(1) will be forwarded to the Hawai'i Supreme Court for its consideration.

On behalf of the Commission, thank you to the subcommittee members for all the work done to date, and for your willingness to continue evaluating this matter after the insurance information is available.

VI. NEW BUSINESS

No new business was discussed.

VII. NEXT MEETING

The next meeting will be on October 12, 2007.

Appendix “D”

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Approval of Agencies
to Which Referrals May be Made Pursuant to
Rule 2.7(b)(3) of the Rules of the
Supreme Court of the State of Hawaii

ORDER APPROVING REFERRAL AGENCIES
(By: Moon, C.J., for the court¹)

Upon consideration of the recommendation of the Hawaii
Supreme Court Commission on Professionalism (First Report to the
Hawaii Supreme Court, dated March 10, 2006) that the "Order
Approving Referral Agencies," filed by this court on January 26,
1996, be amended,

IT IS HEREBY ORDERED that the following agencies or
types of agencies are approved for referrals pursuant to Rule
2.7(b)(3) of the Rules of the Supreme Court of the State of
Hawaii:

1. Hawaii State Bar Association
(HSBA), including any agencies,
entities, programs, or individuals,
with which or whom the HSBA has
arranged for the provision of
services or referrals;
2. Attorneys and Judges Assistance
Program (AAP), including any
agencies, entities, programs, or
individuals (whether located in
Hawaii or elsewhere), with which
or whom the AAP has arranged for
the provision of services or
referrals;

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 APR 11 AM 10:43

FILED

¹ Considered by: Moon, C. J., Levinson, Nakayama, Acoba, and Duffy, JJ.

3. Hawai'i licensed physicians (including, but not limited to, psychiatrists) and/or psychologists;
4. Certified Public Accountants and/or other allied accounting professionals;
5. Continuing legal education or professionalism courses and/or programs;
6. Mediation, arbitration, or other forms of alternative dispute resolution; and
7. Any other agencies, entities, programs, or individuals, not otherwise enumerated above, that are deemed appropriate under the circumstances.

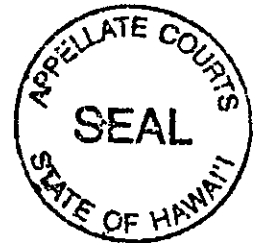
This order supercedes this court's Order Approving Referral Agencies, dated January 23, 1996.

DATED: Honolulu, Hawaii, April 11, 2006.

FOR THE COURT:



Chief Justice



Appendix “E”

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment

of the

Rules of the Supreme Court of Hawaii

K. HAMAKA'DO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 DEC 18 PM 1:30

FILED

AMENDED

ORDER AMENDING RULE 16 OF THE

RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

(By: Moon, C.J.; Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rule 16 of the Rules of the Supreme Court of the State of Hawaii, is amended, effective January 1, 2007¹, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 16. ATTORNEYS AND JUDGES ASSISTANCE PROGRAM.

16.1. Purpose; scope.

(a) The purpose of the Attorneys and Judges Assistance Program ("AAP") is to provide immediate and continuing assistance to attorneys who practice law in the State of Hawaii, [and] judges of the courts of the State of Hawaii, and law students of the University of Hawaii at the Richardson School of Law (law students) who suffer from problems, disability or impairment which affect their professional performance for any reason ("impairment"), including but not limited to excessive use of alcohol or drugs ("substance abuse"), physical or mental illness, or other infirmity. Professional performance is affected when an attorney, [or] judge, or law student is incapable of devoting the time and attention to, and providing the quality of service in, his or her law practice, [or] judicial duties, or law studies which is necessary to protect the interest of a client, [or] litigant, or law school career.

(b) The AAP shall consist of at least the following categories of programs.

¹ The Order Amending Rule 16 of the Rules of the Supreme Court of the State of Hawaii, entered on December 12, 2006, had an incorrect effective date of July 1, 2007.

(1) VOLUNTARY PROGRAM. A voluntary program addressing "self-referrals" entering treatment without the formal prior intervention of the AAP.

(2) INTERVENTION PROGRAM. A program primarily addressing attorneys, [and] judges, and law students who are not "self-referrals" and who have not yet been the subject of a complaint that warrants a disciplinary petition, but whose impairment affects their professional performance and may put them at risk of disciplinary action if the impairment continues.

(c) AAP shall not provide treatment to impaired attorneys, [and] judges, and law students but shall instead provide education and guidance concerning substance abuse, refer impaired attorneys, [and] judges, and law students to appropriate substance abuse and/or mental health treatment providers; and provide emotional support to impaired attorneys, [and] judges, and law students.

16.4. Voluntary program.

(a) The Director shall administer the Voluntary Program of the AAP in accordance with policies and procedures adopted by the Board.

(b) The Director shall provide a source of evaluation and treatment for attorneys, [and] judges, and law students who, on a strictly voluntary basis, desire to avail themselves of such services.

(c) Attorneys, [and] judges, and law students who voluntarily seek assistance from the AAP shall be evaluated, provided education and guidance concerning substance abuse, referred to appropriate substance abuse or mental health treatment providers, and provided emotional support by attorneys and judges who are recovering substance abusers.

16.5. Intervention program.

(c) The Lawyer Volunteer Committee is established as a committee to utilize intervention exclusively with attorneys, [and] judges, and law students who are impaired to facilitate their entry into diagnosis, treatment and rehabilitation.

(d) The Director and/or Lawyer Volunteer Committee shall review all information submitted regarding potentially impaired attorneys, judges, and law students and make a determination of the appropriateness of intervention.

16.6. Confidentiality; privilege not to disclose.

(c) A participant in the AAP has a privilege to refuse to disclose and to prevent any other person from disclosing information provided to or maintained by the AAP. A "participant" shall include, but not be limited to, the Director, any

employee or agent of the AAP, members of the Board, members of the Lawyers Volunteer Committee, and attorneys, [or] judges, and law students seeking assistance under the AAP.

DATED: Honolulu, Hawai'i, December 18, 2006.

[Handwritten signature]

Steven A. Leonard

Anna A. Takayama

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James E. Duffin

