

**RE: Proposed Amendment to the  
Commentary to Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct**

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend to the commentary to Rule 2.2 of the Hawai'i Revised Code of Judicial Conduct. The proposal adds clarification about judge's participation in pro bono activities. The proposed amendment and the policy statement are attached hereto.

Comments about the proposed rule should be submitted, in writing, **no later than Friday, November 13, 2009**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website at [www.courts.state.hi.us](http://www.courts.state.hi.us).

Attachment

**PROPOSED AMENDMENT TO  
HAWAII REVISÉD CODE OF JUDICIAL CONDUCT**  
(New material is underlined)

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**Rule 2.2. IMPARTIALITY AND FAIRNESS**

A judge shall uphold and apply the law\* and shall perform all the duties of judicial office fairly and impartially.\*

**COMMENT:**

[1] *To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.*

[2] *Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.*

[3] *When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.*

[4] *It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.*

[5] *It shall not be a violation of this rule for a judge to sanction a lawyer by ordering the lawyer to provide pro bono legal services to persons or organizations of the lawyer's choosing that are described in Rule 6.1(a) of the Hawai'i Rules of Professional Conduct, or to make a monetary contribution to such organizations.*

## **HAWAII JUDICIAL PRO BONO POLICY**

The Hawai'i Access to Justice Commission has compiled the provisions in the Hawai'i Judicial Code relating to pro bono activities by judges in a brief two page document for easy referral by and the convenience of judges. These provisions have been organized in a sequence that is somewhat different from that presented in the Code itself to enhance clarity. The Statement was drafted by the Access to Justice Commission's Committee on Increasing Pro Bono Legal Services.<sup>1</sup>

The provisions of the Hawai'i Judicial Code are derived essentially from the ABA model judicial code. This document is presently pending approval by the Hawai'i Supreme Court.

### **Hawai'i Judicial Code Pro Bono Policy Statement**

Rule 3.7(b) of the Hawai'i Revised Code of Judicial Conduct ("HRCJC") specifically provides that "[a] judge may encourage lawyers to provide pro bono publico legal services." Consistent with Rule 3.7(b) and the commentary thereto, a judge may so encourage provision of delivery of pro bono publico services by:

- (1) appointing lawyers to act as counsel for indigent parties in individual cases. [Comment [5] to Rule 3.7]

A judge may, without employing coercion or misusing the prestige of judicial office, promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services through many forms, including:

- (1) providing lists of available pro bono publico programs to lawyers; [Comment [5] to Rule 3.7]
- (2) training lawyers to do pro bono publico legal work; [Comment [5] to Rule 3.7] and
- (3) participating in events recognizing lawyers who have done pro bono publico work. [Comment [5] to Rule 3.7]

Moreover, HRCJC Rule 3.7(a) specifically provides that "a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit[.]" As specifically related to encouragement of the provision of pro bono publico services, a judge may participate in the following activities:

- (1) assisting in planning of fund-raising for the [pro bono publico] organization or entity and participating in the management and investment of the organization's or entity's funds; [Rule 3.7(a)(1)]
- (2) soliciting contributions for such [pro bono publico] organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority; [Rule 3.7(a)(2)]
- (3) serving as an officer, director, trustee, or nonlegal advisor of such [pro bono publico] organization or entity, unless it is likely that the organization or entity:
  - (A) will be engaged in proceedings that would ordinarily come before the judge; or
  - (B) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member; [Rule 3.7(a)(6)(A)-(B)]
- (4) donating, without attribution of judicial title, services or goods at fundraising events; [Rule 3.7(a)(7)] and
- (5) speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such [pro bono publico] organization or entity, but, if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice. [Rule 3.7(a)(4)]

To the extent that the pro bono organization or entity is concerned with the law, the legal system or the administration of justice, a judge may participate by:

- (1) soliciting membership for such [pro bono publico] organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity; [Rule 3.7(a)(3)] and
- (2) making recommendations to a public or private fund granting organization or entity in connection with [a pro bono publico organization's] programs and activities. [Rule 3.7(a)(5)]

<sup>1</sup> Moya Gray, Executive Director of Volunteer Legal Services Hawaii, is Chair of the Committee on Increasing Pro Bono Legal Services. Other members of the committee are: Judge Simone Polak, Shannon Wack, Derek Kobayashi, Tracey Wiltgen, Gilbert Doles, Clara Javier, Mihoko Ito, Colbert Matsumoto, Robin Kobayashi, and Wayne Tanna.