

RE:                   **Proposed Amendments to Rules 2.20 and 17 and New Rule 2.21  
of the Rules of the Supreme Court of the State of Hawaii**

The Supreme Court of Hawai'i seeks public comment regarding a proposals to (1) amend Rules 2.20 and 17, and (2) adopt new Rule 2.21 of the Rules of the Supreme Court of the State of Hawai'i (RSCH). The proposed amendments would allow any attorney to designate a trustee to carry out the duties imposed by RSCH Rule 2.20. The proposed amendments are attached hereto.

Comments about the proposed rule should be submitted, in writing, **no later than Monday, January 25, 2010**, 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  
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**  
(Deleted material is bracketed and stricken; new material is underlined)

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**2.20. Trustee proceedings.**

**(a) Grounds for appointment of trustee.** Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, or has been suspended or disbarred and has not complied with Rule 2.16, or there is other good cause exhibiting an attorney's inability to protect the interests of the attorney's clients, and no partner, executor, designated trustee, or other responsible party capable of conducting the attorney's affairs is known to exist, the supreme court, upon proper proof of the fact, shall appoint an attorney as trustee to inventory the files of the inactive, disappeared, deceased, suspended, or disbarred attorney and to take such action as seems indicated to protect the interests of that attorney's clients.

When appointment of a trustee is warranted, Counsel shall file with the supreme court a motion for appointment of an attorney to serve as trustee. Trustees may receive compensation for their services, and may be reimbursed for traveling and other expenses incidental to the performance of their duties.

**(b) Confidentiality.** A trustee shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the supreme court's order appointing the attorney to make such inventory, carry out the duties of a designated trustee, and cooperate in investigations by Counsel or the Lawyers' Fund for Client Protection (Fund).

**(c) Duties of trustees.**

(1) A trustee appointed under this rule or designated under Rules 2.21 and 17 of these rules shall:

(i) take custody of all client files and records of the attorney;

(ii) publish [~~one (1)~~] advertisement in a newspaper of general circulation announcing that the trustee has been appointed or designated to inventory the attorney's client files, that the attorney's clients may contact the trustee to retrieve their files within the time specified in the advertisement, and that unclaimed items will be destroyed;

(iii) send form notices by regular mail to all of the attorney's clients, informing them of the attorney's status and that those clients may obtain their files by contacting the trustee at an address and telephone number specified in the notices; and

(iv) obtain and maintain written records and verification of all files released to the attorney's clients.

(2) A trustee appointed under this rule or designated under Rules 2.21 and 17 of these rules may:

(i) employ locksmiths to open the attorney's present and former law offices, as well as open any safes, cabinets, closets, or other secured areas located within the attorney's present and former law offices and any other areas under the attorney's control (if necessary in the discretion of the trustee);

(ii) take possession of any trust and other bank accounts found or known to exist, determine amounts therein and amounts due the clients for whom the accounts are held, and seek orders from the supreme court for disbursement of amounts due to the clients;

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(iii) if the trustee is ~~designated~~ authorized by the trustees of the Fund to act on behalf of the trustees for the Fund, cause subpoenas to be issued pursuant to Rule 10.6 and authorize his or her staff to have access to the attorney's business and banking records to consult with and advise the Fund Trustees concerning the validity and propriety of claims brought by the attorney's clients against the Fund;

(iv) employ accountants and bookkeepers as necessary to determine the source and ownership of funds recovered by the trustee;

(v) upon approval by the Disciplinary Board, place any unclaimed files in storage (in the custody of the Disciplinary Board); or

(vi) take such further action as the supreme court directs.

**(d) Disposition of unclaimed files.** ~~Following discharge of the trustee~~ Upon completion of the trustee's duties, the attorney's client files shall be stored ~~by Counsel~~ for a period of ~~one (1)~~ year. At any time thereafter, ~~Counsel~~ the trustee may publish a legal notice in a newspaper of general circulation announcing that the attorney's client files will be destroyed in ~~thirty (30)~~ days if unclaimed.

Upon expiration of the ~~thirty (30)~~ day period, ~~Counsel~~ the trustee may destroy any unclaimed files which, in the exercise of discretion, ~~Counsel~~ the trustee concludes do not contain original documents of value to the attorney's clients.

(e) Upon appointment of a trustee, the attorney whose files are the subject of the trusteeship may, by order of the supreme court, be suspended from the practice of law in this state until the trusteeship is completed and may be required to pay ~~to the Board~~ all costs ordered and incurred, together with interest at the Hawai'i statutory judgment rate.

**Rule 2.21 Member Designation of Trustee.**

**(a) Designation and Acceptance.** Any active member of the Bar not exempt under Rule 17(d)(6) may designate a resident member of the Bar in good standing as trustee to perform the duties set forth in Rule 2.20(c) and 2.20(d) of these rules. Such designation shall be effective upon acceptance by the designated member and the occurrence of circumstances set out in Rule 2.20(a).

**(b) Revocation.** A designated trustee may revoke acceptance anytime prior to the occurrence of the circumstances set out in Rule 2.20(a); provided notice of revocation is immediately provided to the Bar and the designating member. The designating member shall, within 10 days after receipt of notice of revocation, either submit a new designation and acceptance to the Bar or shall pay the Trustee Fee imposed by section (f) of this rule.

**(c) Petition for instruction or order; no filing fee.** A designated trustee may petition the supreme court, without payment of a filing fee, for instructions and orders as necessary to perform the designated trustee's duties. A copy of the designation and acceptance shall be appended to the initial petition or order.

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**(d) Compensation.** A designated trustee may pay expenses from the earned income account(s) of the attorney for whom the trustee is acting, but shall otherwise serve without compensation. In the event no earned income account exists or the earned income account balance is insufficient to cover expenses, the designated trustee may apply to the bar for reimbursement of expenses. A trustee may report trustee service, under Rule 17(d)(1)(ii) of these rules, as pro bono service provided pursuant to Rule 6.1(b)(3) of the Hawai'i Rules of Professional Conduct.

**(e) Immunity.** Designated Trustees are immune from all civil liability for conduct and communications occurring in the performance of their official duties, and civil suits predicated thereon may not be instituted.

**(f) Trustee fee.** A member who does not designate another member to serve as a trustee shall pay an annual fee of \$XXXX. Such monies shall be paid to and administered by the Bar to fund expense claims made pursuant to Rule 2.21 and reasonable fees approved by the supreme court for appointment of trustees pursuant to Rule 2.20.

**Rule 17. THE HAWAI'I STATE BAR.**

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**(c) Membership and classes of members.** All persons now or hereafter admitted to practice law before the Supreme Court of this State are declared to be members of the Hawai'i State Bar. The Bar shall have the responsibility to establish classes of membership, including but not limited to a classification for active members consisting of all persons who are engaged in the practice of law in this State, either full-time or part-time, salaried or non-salaried, and a classification for judicial members, who shall not be obligated to pay dues at the same rate as active members and who shall not be entitled to run for elective office in the Bar.

**(d) Member registration, information, assessment, suspension and status.**

(1) MEMBER REGISTRATION. Each member of the Hawai'i State Bar shall file an attorney registration statement and provide such information as the Board of Directors may require. A member shall notify the Hawai'i State Bar, in writing, within thirty (30) days of any change of such required information. At minimum, the registration statement shall require disclosure of:

(i) professional discipline or convictions in any jurisdiction, provided that convictions for offenses that are or would be classified under Hawai'i law as petty misdemeanors, violations, or infractions need not be disclosed;

(ii) hours of pro bono service for the previous year. Pro bono service hours for individual members shall be confidential, and the Hawai'i State Bar shall disclose such information only in aggregate reports of pro bono hours for the entire membership; ~~and~~

(iii) professional liability insurance, if any; provided that each active member who certifies the member is a government lawyer or in-house counsel

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and does not represent clients outside that capacity is exempt from providing professional liability insurance information[-] ; and

(iv) the member's election to either

(1) designate a resident member to serve as trustee pursuant to Rule 2.20 of these rules;

(2) pay the trustee fee imposed by these rules; or

(3) submit a commitment from the member's firm that the firm will timely and appropriately maintain the member's client's files, provide appropriate notification to the member's clients, and will either provide necessary services to the clients or will assist the clients in obtaining other counsel, as the client prefers. For purposes of this rule "firm" means any lawyer's professional business organization composed of at least 2 lawyers.

If the member elects to designate a trustee, the member shall provide the trustee's name, address for service of process, telephone number, and other contact information and the designated trustee's written agreement to serve in such capacity.

(2) INFORMATION TO DISCIPLINARY COUNSEL. The Hawai'i State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board information regarding: (1) the members' addresses for service of process as required by Rule 2.11 of these rules; (2) members' certification of annual compliance with trust accounting procedures as required by Rule 11(f) of these rules; (3) members' certification of compliance with accounting rules, as required by Rule 1.15(f)(3) of the Rules of Professional Conduct; and (4) the disclosure of professional discipline or convictions required in subsection (i) herein. In addition, the Hawai'i State Bar shall provide to the Office of Disciplinary Counsel and the Disciplinary Board attorneys' trustee designations and acceptances of designation and information regarding individual members necessary to assist in furtherance of their duties under Rule 2 of these rules.

(3) DUES, FEES AND CHARGES. Each member shall pay to the Bar the following dues, fees or charges:

(i) *Hawai'i State Bar dues*. Annual dues as determined by the Board of Directors of the Bar.

(ii) *Disciplinary Board fee*. The annual fee, determined in accordance with Rule 2.4(e)(~~7~~8), shall be paid over by the Bar at least quarterly to the Disciplinary Board.

(iii) *Lawyers' Fund for Client Protection fee*. The fee, determined in accordance with Rule 10.4(1), shall be paid over by the Bar at least quarterly to the Fund.

(iv) *Attorneys and Judges Assistance Program fee*. The annual fee, determined in accordance with Rule 16.2(d)(4) shall be paid over by the Bar at least quarterly.

(v) Trustee fee. The annual fee, if any, imposed by Rule 2.21(f).

(4) ADMINISTRATIVE SUSPENSION. Failure to file a properly completed attorney registration statement or nonpayment of any dues, fees, or charges required by these rules, after 15 days written notice, shall result in automatic suspension by the Hawai'i State Bar, of membership and the right to practice law

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until reinstatement. The Board of Directors of the Bar (1) may establish late processing fees and reinstatement charges and (2) may exempt from the registration requirements inactive attorneys who do not maintain active licenses and do not practice law in any other jurisdiction.

(5) REINSTATEMENT. Any attorney suspended under the provisions of (4) above shall be reinstated by the Hawai'i State Bar without further order upon:

(i) payment to the Bar of all arrears and a late processing and reinstatement charge in such amount as shall be determined by the Board of directors from time to time, and

(ii) satisfaction of such other requirements as may be imposed by the Board of Directors of the Bar and/or [~~this~~]the supreme court.

(6) EXEMPTIONS.

(i) *Judges' exemption*. Full-time judges of courts of record of the State of Hawai'i and United States courts whose jurisdiction includes Hawai'i shall be exempt from [~~the~~] payment of the Disciplinary Board and Lawyers' Fund for Client Protection fees and from the requirement to either designate a trustee or pay a trustee fee for such time as they serve in office.

(ii) *Government attorneys' exemption*. Active attorneys who work exclusively for the federal government, the State of Hawai'i, or any political subdivision of the State of Hawai'i and who, except for permissible pro bono service, engage in no private practice of law whatsoever, whether full-time or part-time, compensated or uncompensated, shall be exempt from [~~the~~] payment of the Lawyers' Fund for Client Protection fee and from the requirement to either designate a trustee or pay a trustee fee for such time as they remain in those positions. The[is] Lawyers' Fund and trustee exemptions shall be preserved for those government attorneys providing pro bono services, as defined in Rules of Professional Conduct 6.1, to non-government clients and who neither receive funds from, nor disburse funds to, clients in the provision of pro bono services. Any attorney who desires to be exempt from payment of such fees shall submit proof of the attorney's eligibility for exemption. An attorney who ceases to be exempt shall promptly pay the full amount of the most recent assessment.

(iii) *"Inactive" members' exemption*. Attorneys on inactive status on December 31 of the calendar year preceding the assessment shall be exempt from the payment of Lawyers' Fund for Client Protection fees and from the requirement to either designate a trustee or pay a trustee fee for such time as they remain inactive. Any attorney who desires to be exempt from payment of such fees shall submit proof of the attorney's eligibility for the exemptions. Attorneys who elect inactive status for medical reasons and attorneys who are transferred to inactive status pursuant to Rule 2.19 of the Rules of the Supreme Court shall be exempt from payment of fees for the Disciplinary Board, Lawyers' Fund for Client Protection, and Attorneys and Judges Assistance Program for such time as the medical condition exists. Any attorney who returns to active status shall promptly pay the full amount of the most recent assessment.

(7) PROOF OF PAYMENT. An attorney's cancelled check duly endorsed and negotiated by the Bar, or other confirmation of payment, shall constitute a

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receipt for payment of fees under this rule in order to enable the attorney on request to demonstrate compliance with the requirements of this rule.

(8) **INACTIVE STATUS.** An attorney who is in compliance with this rule, but who has retired or is no longer engaged in practice in this jurisdiction, or who is suffering from a medical condition, may elect inactive status and discontinue the practice of law in Hawai'i. The Bar shall not honor a voluntary election to inactive status for medical reasons unless the election is supported by a physician's affidavit or declaration that the attorney is experiencing a serious medical condition and the attorney's affidavit or declaration that the election is due to medical reasons and not solely for purposes of the exemption provided by paragraph (6) above. Upon the filing and recognition of an election to inactive status, together with a processing fee in such amount as the Board of Directors shall determine from time to time, the attorney shall be placed on inactive status and shall no longer be eligible to practice law. An attorney on inactive status shall be carried on the rolls of the Bar in such inactive classification(s) as may be provided in the bylaws of the Bar and, except as provided by paragraph (6), shall be required to pay such dues or fees, if any, as the Board of Directors of the Bar may prescribe from time to time or as the supreme court may direct in accordance with the Rules of the Supreme Court of the State of Hawai'i. The Bar shall advise the Disciplinary Board and the clerk of this court of the names of all attorneys who assume inactive status. Attorneys on inactive status shall remain subject to the jurisdiction of this court, the Disciplinary Board, the Lawyers' Fund for Client Protection, the Attorneys and Judges Assistance Program and the Bar.

(9) **RETURN FROM VOLUNTARY INACTIVE STATUS.** An attorney on voluntary inactive status or on voluntary inactive/medical status remains in that status until and unless the attorney requests and is granted reinstatement to the active roll. Reinstatement shall be automatic upon the payment of all dues and fees for the year the request is made and, for an attorney on voluntary inactive/medical status, submission of a physician's affidavit or declaration that the attorney is capable of returning to work and the attorney's affidavit or declaration that the reasons for the election of inactive/medical status no longer exist, unless the attorney is subject to an outstanding order of suspension or disbarment or transfer to inactive status under Rule 2.19.