

RE: **Proposal to Amend Rule 8.4(c) of the Hawai'i Rules of Professional Conduct**

EXEMPTING COVERT GOVERNMENT INVESTIGATIONS

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 8.4(c) of the Hawai'i Rules of Professional Conduct and to add a new accompanying Comment. The proposal would clarify that attorneys, supervising or participating in lawful, covert, government investigations, are not in violation of the prohibition against deceitful or dishonest conduct, if certain requirements are met. The proposal is attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Friday, September 20, 2019**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS TO
HAWAII RULES OF PROFESSIONAL CONDUCT**
(Deleted material is bracketed and stricken; new material is underlined)

Rule 8.4. MISCONDUCT.

It is professional misconduct for a lawyer to:

- (a) attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
- (d) Reserved;
- (e) state or imply an ability to influence improperly a government agency or official; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) fail to cooperate during the course of an ethics investigation or disciplinary proceeding.

COMMENTS:

[3] It is not professional misconduct for a lawyer to supervise or participate in lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights or in lawful intelligence-gathering activity, provided the lawyer's conduct is otherwise in compliance with these Rules.

~~[3]~~ [4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) of these Rules concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

~~[4]~~ [5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional and ethical obligations of an attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

~~[5]~~ [6] An attorney who is the subject of an ethics investigation or disciplinary proceeding has an ethical duty to timely cooperate with that investigation or proceeding. Examples of failure to cooperate are described in Rule 2.12A(a) of the Rules of the Supreme Court of the State of Hawaii.