UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EARLE A. PARTINGTON, Plaintiff, v. VICE ADMIRAL JAMES W. HOUCK, JAGC, USN, et al., Defendants.	)	Civil No. 10-1962(HHK)

DEFENDANTS' MOTION FOR RECONSIDERATION

In this case involving a decision made by the Judge Advocate General of the United States Navy ("NJAG") to suspend Plaintiff Earle A. Partington from practicing law in any and all proceedings involving Navy and Marine Corps personnel, after conducting an ethics investigation into plaintiff's representation of a client during a court-martial proceeding, defendants have moved for summary judgment in part and to dismiss in part. That motion is fully briefed and pending.

On November 18, 2011, at 1:49 pm, plaintiff filed a Motion for Ex Parte Temporary Restraining Order ("TRO"), pursuant to Fed. R. Civ. P. 65(b), without giving notice to defendant or defense counsel. Plaintiff claimed that such a motion was necessary because the Supreme Court of Hawaii had suspended him from the practice of law for thirty days ("Hawaii Suspension

Order"), based on the suspension decision imposed by the NJAG.[1] Plaintiff further contended that, pursuant to Rule 2.15 of the Rules of the Supreme Court of the State of Hawaii ("Hawaii Rule 2.15"), he was required to notify his clients of his suspension by November 21, 2011, and that such notice would irreparably injure his reputation. By separate filing also on November 18, 2011, plaintiff moved for a preliminary injunction, seeking to have this Court set aside the NJAG suspension until the Court issues a final ruling in this case.

By Order dated November 18, 2011, issued at 3:37 pm, this Court granted plaintiff's request for an *ex parte* TRO. The Court concluded that plaintiff had demonstrated that he would suffer irreparable harm to his reputation and that an *ex parte* order was appropriate "because of the short time frame in which Plaintiff must complete the notice to his clients under the rules of the Supreme Court of the State of Hawaii." Id. at 2. The TRO is in effect until 3:30 pm on December 2, 2011. Id.

Pursuant to Fed. R. Civ. P. 65(b)(4), defendants requests that this Court reconsider its November 18, 2011 Order and dissolve the TRO for the following reasons.

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[1] In fact, the decision, which plaintiff failed to provide to this Court, clearly shows that the Court in Hawaii looked beyond the NJAG suspension to the underlying facts and concluded that plaintiff violated Hawaii Rules of Professional Conduct Rule 3.3(a)(1). Ex. A, copy attached, at 2.

First, plaintiff's filing did not meet the requirements of Fed. R. Civ. P. 65(b)(1). Under this rule a TRO without notice to the adverse party may be entered only if:

> (A) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Id. As the Supreme Court has observed, Rule 65's strict restrictions "reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 438-39 (1974). Therefore, *ex parte* temporary restraining orders "should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." Id. at 439. Here, plaintiff's *ex parte* motion sought to change the status quo, by asking this Court to set aside a suspension order that had been in existence since May 17, 2010. Administrative Record at 64-67. For that reason alone it should have been denied.

Plaintiff also failed to comply with Rule 65(b)(1)(B). Plaintiff's counsel's affidavit in support of the motion for a TRO indicates that **no** efforts were made to give notice to

defendants' counsel regarding plaintiff's intent to seek emergency injunctive relief in connection with an order issued on November 9, 2011. Plaintiff's counsel's affidavit offers no explanation for why notice should not have been required when the TRO addresses an Order issued on November 9, 2011.

Indeed, any "emergency" that could be found to exist was created by plaintiff delaying his filing for a TRO from November 9, 2011, when the Hawaii Suspension Order was issued, until mid-day November 18, 2011. Plaintiff should not be allowed to create a situation that could have been avoided, by unreasonably waiting to file a request for extraordinary emergency injunctive relief until the very last minute, and then argue that defendant should be given no opportunity to be heard. See Mission Power Engineering Co. v. Continental Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995) ("'Ex parte applications are not intended to save the day for parties who have failed to present requests when they should have....'"-- citation omitted). There is absolutely no reason plaintiff's motion could not have been filed sooner, thereby giving defendants an opportunity to be heard prior to the Court rendering its decision.

Second, contrary to plaintiff's representation, Hawaii Rule 2.15 did not require him to notify his clients of his suspension on November 21, 2011. The Hawaii Suspension Order expressly states that "Respondent Partington is suspended from the practice

of law in this jurisdiction for a period of 30 days, **effective 30 days from entry of this order**, as provided by the RSCH Rule 2.16(c)." Ex. A at 3. Plaintiff acknowledged that the effective date of his suspension would not be until December 9, 2011. Plaintiff's TRO Motion at 2, n.3.

Hawaii Rule 2.15, which plaintiff also did not provide to this Court, states in relevant part that:

> (b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his or her clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his or her disbarment or suspension and consequent inability to act as an attorney after the effective date of his or her disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys in his or her place.
>
> (c) Orders imposing suspension or disbarment shall be effective 30 days after entry. . . .
>
> (d) Within ten days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the supreme court an affidavit showing: (1) that he or she has fully complied with these rules and with the portions of the order requiring completion before the effective date of the order; (2) all other state, federal and administrative jurisdictions to which he or she is admitted to practice; and (3) that he or she has served a copy of such affidavit upon Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her. . . . .

Id., Ex. B, attached. Thus, contrary to plaintiff's representation, plaintiff should have "promptly" notified his

clients, but his affidavit to the Court was not due until ten days after December 9, 2011, i.e., ten days after the effective date of the suspension order.[2] Hawaii Rule 2.15 (b)-(d). In short, nothing was due on November 21, 2011, and, therefore, no decision needed to be made by this Court by November 21, 2011.

Finally, plaintiff's claim of irreparable injury is based on his statement that his reputation will be irreparably injured "once my clients have been notified of my suspension." Affidavit of Earle Partington, ¶ 9. Plaintiff, however, neglected to inform the Court that Hawaii Rule 2.15(e) provides:

> (e) The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit in which the disciplined attorney maintained his or her practice or on the Board's or the Judiciary's public website.

Id. Notice of plaintiff's suspension was published in the Honolulu Star Advertiser on November 11, 2011. See Ex. C, attached.

Plaintiff presented no evidence to this Court that his clients had not learned of his suspension, and Hawaii Rule 2.15(e) and Exhibit C suggest that they might well have received

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[2] Plaintiff's counsel has informed defense counsel that they contacted the clerk's office in Hawaii and were told that plaintiff was required to submit his affidavit under Hawaii Rule 2.15(d) by November 21, 2011. The clerk's office is not authorized to give legal advice to a litigant, see, e.g., Roosevelt Land LP v. Childress, 2006 WL 1877014, *2 (D.D.C. July 5, 2006), and based on the express language of the rule, this advice was obviously erroneous.

the news. Accordingly, plaintiff failed to demonstrate any irreparable injury warranting the entry of an *ex parte* temporary restraining order.

Conclusion

Based on the foregoing, defendants respectfully request that this Court reconsider its November 18, 2011 Order and dissolve the temporary restraining order entered against Defendant James W. Houck.

Respectfully submitted,

RONALD C. MACHEN JR. D.C. BAR # 447889
United States Attorney

RUDOLPH CONTRERAS, D.C. BAR # 434122
Assistant United States Attorney

/s/ Marina Utgoff Braswell
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EARLE A. PARTINGTON, Plaintiff, v. VICE ADMIRAL JAMES W. HOUCK, JAGC, USN, et al., Defendants.	)	Civil No. 10-1962(HHK)

ORDER

Upon consideration of defendants' motion for reconsideration, and the entire record in this case, and it appearing to the Court that the motion should be granted for good cause shown, it is hereby

ORDERED that defendants' motion for reconsideration is granted; and it is further

ORDERED that the temporary restraining order entered by Order dated November 18, 2011 is dissolved.

_____
UNITED STATES DISTRICT JUDGE

EXHIBIT A

SCAD-11-0000162

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

EARLE A. PARTINGTON, Respondent.

ORIGINAL PROCEEDING
(ODC 10-079-8913)

ORDER OF SUSPENSION

(By: Recktenwald, C.J., Duffy, J., and Intermediate Court of Appeals Chief Judge Nakamura, in place of Acoba, J., recused; with Nakayama, J., dissenting, in which McKenna, J., joins)

We are presented with a reciprocal disciplinary proceeding against Respondent Earle A. Partington brought pursuant to the Rules of the Supreme Court of the State of Hawai'i (RSCH) Rule 2.15, which obligates us to impose reciprocal discipline, see RSCH Rule 2.15(d), unless it appears or is shown that[1] (1) the procedures in the foreign jurisdiction through which discipline was imposed were "so lacking in notice or opportunity to be heard as to constitute a deprivation of due

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[1] RSCH Rule 2.15(c) provides that reciprocal discipline shall be imposed "unless Counsel or the attorney demonstrates, or it clearly appears upon the face of the other jurisdiction's record, that" one of the four conditions set forth above exists.

process"; (2) that "there was such an infirmity of proof establishing the factual basis for the discipline . . . as to give rise to the clear conviction that the supreme court could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject"; (3) "the reason for the other jurisdiction's discipline . . . no longer exist"; or (4) that "the conduct established warrants substantially different discipline . . . in this state." See RSCH Rule 2.15(c)(1)-(4).

Upon consideration of the evidence in the record and the Disciplinary Board's Report and Recommendation for the Disbarment of Respondent Partington, and following full consideration of Respondent Partington's arguments and evidence submitted to this court in opposition to the Disciplinary Board's Report and Recommendation, we conclude as follows:

It appears that Respondent Partington submitted an appellate brief to the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C., which omitted material facts necessary to accurately portray the court-martial proceedings that were the subject of the appeal. It further appears that the Department of the Navy's Office of the Judge Advocate General imposed upon Respondent Partington an indefinite suspension from the practice of law in the Department of the Navy's jurisdictions, and the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C. imposed a one-year suspension upon Respondent Partington. Partington's factual omissions in the appellate brief were in violation of the Hawai'i Rules of Professional Conduct Rule 3.3(a)(1) ("A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal [.]") and HRPC Rule 3.3 cmt. 2 ("There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."); HRPC Rule 8.4(a) ("It is professional misconduct for a lawyer to . . .

violate . . . the rules of professional conduct [.]"); and HRPC Rule 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving . . . misrepresentation [.]").

It further appears that Respondent Partington has substantial experience in the practice of law and continues to refuse to acknowledge the wrongful nature of his conduct.

In mitigation, it appears that the record in the court-martial was unclear in some respects, and that Partington had some basis on which to argue that his client could not plead guilty to a lesser included offense under the circumstances as they existed.

In submitting an appellate brief which omitted material facts, Partington engaged in professional misconduct. However, unlike the Judge Advocate General and the dissent, and given the lack of clarity in certain aspects of the record, we are not convinced that Partington's omissions were done deliberately with the intent to mislead or deceive the court. Considering all of the circumstances, we conclude that a suspension from the practice of law is warranted, although Partington has demonstrated that the conduct established warrants a shorter period of discipline than the indefinite suspension to practice law imposed by the Judge Advocate General, and the one-year suspension imposed by the United States Navy-Marine Corps Court of Criminal Appeals in Washington, D.C.

Therefore,

IT IS HEREBY ORDERED that Respondent Partington is suspended from the practice of law in this jurisdiction for a period of 30 days, effective 30 days from entry of this order, as provided by the RSCH Rule 2.16(c). This 30-day suspension appropriately recognizes the serious nature of Respondent Partington's misconduct, and is consistent with other cases that we have decided involving misrepresentations to the court. See ODC v. Parker, No. 18045 (Haw. Sept. 9, 1994) (unpublished)

(suspending Parker for one month for his misrepresentations to the Circuit Court, his client, and the ODC). Although there are other cases involving misrepresentations where longer sanctions have been imposed, see Dissenting Opinion at 7-8, those cases often involve additional forms of misconduct.

IT IS FURTHER ORDERED that, in addition to any other requirements for reinstatement imposed by the Rules of the Supreme Court of the State of Hawai'i, Respondent Partington shall pay all costs of these proceedings as approved upon timely submission of a bill of costs.

IT IS FURTHER ORDERED that Respondent Partington shall, within ten (10) days after the effective date of this order, file with this court an affidavit in full compliance with RSCH Rule 2.16(d).

DATED: Honolulu, Hawai'i, November 9, 2011.

/s/ Mark E. Recktenwald

/s/ James E. Duffy, Jr.

/s/ Craig H. Nakamura

SCAD-11-0000162

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

EARLE A. PARTINGTON, Respondent.

ORIGINAL PROCEEDING
(ODC 10-079-8913)

DISSENTING OPINION BY NAKAYAMA, J.,
IN WHICH McKENNA, J., JOINS

I respectfully dissent.

Pursuant to RSCH Rule 2.15(c), Respondent Partington, to avoid the same or substantially similar discipline of indefinite suspension in this jurisdiction, must demonstrate that one of four conditions pertain to his disciplinary matter:

> (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) there was such an infirmity of proof establishing the factual basis for the discipline . . . as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or
> (3) the reason for the other jurisdiction's discipline, or restrictions or conditions no longer exist; or
> (4) the conduct established warrants substantially different discipline . . . in this state.

Respondent Partington has failed to demonstrate that any of the four conditions, *supra*, exist in the present matter and, therefore, RSCH Rule 2.15(c) clearly states that the supreme court "*shall* enter an order imposing *the same or substantially equivalent discipline* . . . upon the attorney's license to practice law in this jurisdiction . . . ." (Emphasis added.) In light of Respondent Partington's knowing and willful misrepresentations to the military appellate court in Washington, D.C. and his persistent lack of cooperation resulting from those misrepresentations -- going so far as to deny the court before which he argued had jurisdiction over him to impose discipline -- I cannot agree that a one-month suspension from the practice of law in this jurisdiction is "the same or substantially similar" to the Judge Advocate General's sanction of indefinite suspension or even to the military appellate court's sanction, not technically related to this reciprocal discipline action from the JAG, of a one-year suspension.

First and foremost, it is important to be clear that Partington was not making a legal argument when he informed the military appellate court in Washington, D.C. that the military judge at the plea-hearing had acquitted his client of the video voyeurism charges: he was intentionally misrepresenting facts to the appellate court in the hope that, by misleading it, he could gain an advantage for his client. There are two alternate

characterizations of Partington's behavior: (1) Partington truly did believe the military judge had, indeed, dismissed the video voyeurism specifications against his client as jurisdictionally flawed -- despite the evidence in the transcript wherein the military judge says clearly and repeatedly that he refuses to make a ruling on that issue at the plea hearing -- in which case Partington at the plea hearing aided and advised his client to plead guilty to charges that Partington believed at the time had been dismissed, or (2) Partington was aware, through the repeated admonitions of the military judge, that the judge was not making a ruling on the adequacy of the charge that day, Partington accepted the fact that the charges, pending a later ruling on their sufficiency, remained against his client, and that Partington made a decision at that time to not challenge the charges further and instead advised his client to plead guilty to a lesser included offense, a strategic decision that ultimately reduced his client's possible sentence from in excess of 60 years to 5 years.

Partington cannot argue that on the day of the plea hearing he believed that the charges remained valid, justifying his advice to plead guilty to the lesser included offense, and then argue later, on appeal, that on the day of the plea hearing he believed the charges were, in fact, declared null and void by the military judge and, therefore, that his client pled guilty to

invalid charges. The two states of mind are mutually exclusive.

It is also important to be clear that, on appeal, Partington did not make the *legal* argument that the indictments of video voyeurism were insufficient as to the element of jurisdiction and therefore invalid, and that his client's pleas of guilty to the lesser included offenses were therefore invalid.[1] As the majority states, there was, indeed, "some basis on which to argue that his client could not plead guilty to a lesser included offense under the circumstances as they existed." If Partington had used the evidence in the record to make the *legal* argument that the appellate court should rule that the charges were insufficient, the appellate court would have analyzed that legal argument under the *Watkins* test, *supra* note 1. In light of the reasoning in *Watkins*, I suspect that the appellate court would have found the missing jurisdictional information was not fatal to the validity of the charges, insofar as Partington's client stated in several instances that he was

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[1] Partington timed his motion to dismiss based on insufficient specificity of the charges so as to make it *after* the military judge had accepted his client's pleas of guilty to the video voyeurism charges, following a very long and very thorough colloquy with Partington's client concerning every charge, but *before* the filing of the appeal, in order to avoid, on the one hand, the prosecutor withdrawing the charges and moving to amend them, and on the other hand, facing a more stringent test on appeal analyzing the sufficiency of the charges (*see United States v. Watkins*, 21 M.J. 208, 209-10 (C.M.A. 1986) (cited by Partington at the plea hearing, and stating that, "[a]lthough failure of a specification to state an offense is a fundamental defect which can be raised at any time, we choose to follow the rule of most federal courts of liberally construing specifications *in favor of validity* when they are challenged for the first time on appeal.") (Emphasis added, footnote omitted.)

aware of the nature of the charges and the location in which his activities occurred and was fully informed as to the charges before him.

In order to avoid the *Watkins* test for validity, which would likely not have succeeded, Partington eschewed the strategy of making the legal argument that the specifications were insufficient and seeking to convince the appellate court to so rule. Instead, rather than convince the appellate court to make the ruling, Partington chose to attempt to deceive the appellate court by informing it that the military judge at the plea hearing *had already made the insufficiency ruling*: that the hearing judge had, in fact, declared the charges invalid, had acquitted Partington's client of the charges and, therefore, that his client had had no charges against him to which he could plead guilty to a lesser offense. The transcript of the hearing makes it abundantly clear that no such ruling was made. He was not making the legal argument that the appellate court *should* rule the specifications insufficient, he was making the false declaration that the trial court *had* ruled the specifications insufficient. It is on that distinction that his discipline is justified.

Partington did not "omit[] material facts necessary to accurately portray the court martial proceedings that were the subject of the appeal" as the majority states -- he deliberately

filed a falsehood with an appellate court that goes beyond "factual omissions" (majority at 2) in an attempt to deceive the appellate justices. Respondent Partington cannot boldly misstate the record and, when confronted with his deceit, hide behind the use of quotation marks. Candor to a tribunal is a clear duty of all attorneys, required by all applicants to the Hawai'i Bar, *see* RSCH Rule 1.3(c)(1) ("A lawyer should be one whose record of conduct justifies the trust of . . . courts . . . . A record manifesting a deficiency in[] honesty, []trustworthiness, . . . or respect for the law shall be grounds for denying an application") and all practitioners before the Bar, *see* HRPC Rule 3.3 ("A lawyer shall not knowingly[] make a false statement of material fact or law to a tribunal") and HRPC Rule 8.4 ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ."). The duty of candor, though, rises above rules of court. A court's trust in the reliability and honesty of the attorneys that practice before it is essential to the very machinery of the court system. Any violations of that duty must be addressed resolutely to make clear to both the attorney in question but also to other attorneys and to the public the severity of the offense and the threat it poses to the trust upon which the judicial system relies. Had Partington's tactics in the present matter succeeded, they would have had a significant

adverse effect on the integrity of the legal proceedings and would have caused serious injury to the legal system.[2]

As to RSCH 2.15(c)(4), through his actions in the military courts, Partington violated the duty of candor and refused to cooperate with the investigation, going so far as to deny the military court's jurisdiction over him for disciplinary purposes. Such behavior in this jurisdiction, which would violate HRPC Rules 3.3(a)(1) and 8.4(c) at a minimum, would not "warrant[] substantially different discipline" from that imposed by JAG. *See ODC v. Hacker*, SCAD-11-0000473, August 16, 2011 (imposing a five-year suspension from the practice of law upon Respondent Hacker for a lack of competence and diligence in an underlying divorce matter, falsifying a document subsequently offered to opposing counsel as authentic, and filing false information in a federal bankruptcy court); *ODC v. Lau*, No. 18459, June 4, 1997 (disbarring Lau for neglecting clients and their matters, failing to obey obligations under rules of a tribunal, misusing client funds which he later refunded, and for failing to cooperate with the investigation into his actions); *ODC v. Regent*, No. 18952, May 23, 1995 (disbarring Regent for making false statements on her Arizona and Nevada Bar

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[2] I do not believe my colleagues in the majority dispute the fact that Partington's Due Process Rights were fully observed in the disciplinary investigation and subsequent hearing (*see* RSCH Rule 2.15(c)(1)), or that violating the duty of candor to a tribunal remains grounds for discipline in the JAG's jurisdiction (*see* RSCH Rule 2.15(c)(3)), so I do not address those issues further.

applications, evading ODC subpoenas, and refusing to answer ODC inquiries into the matter); *ODC v. Martin*, No. 19378, November 29, 1995 (suspending Martin for one year and a day for failing to complete a probate over 15 years, failure to communicate, and for failure to respond to ODC inquiries or to participate in subsequent disciplinary hearings); *ODC v. Miyasaki*, No. 15816, February 18, 1992 (suspending Miyasaki for three years for failure to perform agreements, failure to communicate, charging an excessive fee, failure to refund the fee, and for failure to cooperate in subsequent investigation); *ODC v. Kunimura*, No. 14173, January 3, 1990 (suspending Kunimura for two years for neglecting four cases and failing to cooperate with the disciplinary proceedings, including declining to provide evidence in explanation or mitigation of her conduct); *see also In re Cardwell*, 50 P.3d 897, 900-02 (Colo. 2002) (although Cardwell contended that his false statement to the tribunal that his client had no previous drunk-driving offenses was "made in the heat of the moment and were influenced by his zeal to help his client to avoid jail," the court concluded he had violated, *inter alia*, Colorado Rules of Professional Conduct Rules 3.3(a)(1) and 8.4(c) and imposed a three-year suspension with 18 months stayed); *Att'y Grievance Comm'n v. Maignan*, 935 A.2d 409, 418-20 (Md. 2007) (Attorney's failure to inform court of his suspension from the practice of law and his subsequent appearance before

that court, where he asserted he could represent his client for 15 more days when, in fact, he could not, violated Maryland Rules of Professional Conduct Rule 3.3(a)(1) and Rule 8.4(c) and justified his continued indefinite suspension from the practice of law); *In re Disciplinary Proceeding Against Whitney*, 120 P.3d 550, 552, 557-58 (Wash. 2005) (wherein Whitney was disbarred for violating the duty of candor to a tribunal and engaging in dishonesty and misrepresentation, including, unlike the present matter, a dishonest or selfish motive but also, as here, bad faith obstruction of the disciplinary proceedings and a refusal to acknowledge the wrongful nature of his conduct).

I would impose upon Respondent Partington a suspension from the practice of law of, at a minimum, one year, as well as fees and costs connected with the disciplinary matter and other such conditions as required by the Rules of the Supreme Court.

DATED: Honolulu, Hawai'i, November 9, 2011.

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

EXHIBIT B

Rule 2.16. Disbarred or suspended attorneys.

Hawaii Rules

RULES OF THE SUPREME COURT

Rule 2. DISCIPLINARY RULES

As amended through April 26, 2011

Rule 2.16. Disbarred or suspended attorneys

(a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his or her disbarment or suspension and his or her consequent inability to act as an attorney after the effective date of his or her disbarment or suspension and shall advise said clients to seek legal advice elsewhere.

(b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his or her clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his or her disbarment or suspension and consequent inability to act as an attorney after the effective date of his or her disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys in his or her place. In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) Orders imposing suspension or disbarment shall be effective 30 days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date he or she may wind up and complete, on behalf of any client, all matters that were pending on the entry date. By the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall surrender to all clients all papers and property to which the clients are entitled and any advance payments of fees that have not been earned.

(d) Within ten days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the supreme court an affidavit showing: (1) that he or she has fully complied with these rules and with the portions of the order requiring completion before the effective date of the order; (2) all other state, federal and administrative jurisdictions to which he or she is admitted to practice; and (3) that he or she has served a copy of such affidavit upon Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her.

(e) The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit in which the disciplined attorney maintained his or her practice or on the Board's or the Judiciary's public website.

(f) The Board shall promptly transmit a certified copy of the order of suspension or disbarment to all judges of the State of Hawai'i, and the administrative judge of each judicial circuit shall make such further order as he or she deems necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him or her under these rules so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance

with these rules and with the disbarment or suspension order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

(h) In the event the disbarred or suspended attorney should maintain a presence in an office where the practice of law is conducted, the disbarred or suspended attorney shall not have any contact with the clients of the office either in person, by telephone, or in writing, or have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

History. Renumbered September 1984; amended February 7, 1992, effective February 7, 1992; further amended June 8, 2001, effective July 1, 2001; further amended October 24, 2005, effective January 1, 2006; further amended November 23, 2007, effective January 1, 2008, corrected March 5, 2008; further amended August 30, 2010, effective September 27, 2010.

EXHIBIT C

The Honolulu Star Advertiser
November 11, 2011 Friday

SECTION: HAWAII NEWS PREMIUM

ACC-NO: 128610

LENGTH: 306 words

HEADLINE: State high court suspends Honolulu attorney for 30 days

BYLINE: Kobayashi, Ken

BODY:

ABSTRACT

The Navy's Office of the Judge Advocate General imposed on Partington an indefinite suspension from the practice of law in Navy jurisdictions, and the Navy-Marine Corps Court of Criminal Appeals imposed a one-year suspension, the Supreme Court said.

FULL TEXT

The Hawaii Supreme Court suspended Honolulu attorney Earle Partington on Wednesday from practicing law in Hawaii for 30 days.

The high court ruled that Partington engaged in "professional misconduct" by submitting an appeals brief in the U.S. Navy-Marine Corps Court of Criminal Appeals in Washington, D.C., that appeared to omit facts necessary to accurately portray the case's court-martial proceedings.

The Navy's Office of the Judge Advocate General imposed on Partington an indefinite suspension from the practice of law in Navy jurisdictions, and the Navy-Marine Corps Court of Criminal Appeals imposed a one-year suspension, the Supreme Court said.

The high court said Partington's factual omission in his brief violated Hawaii Rules of Professional Conduct governing lawyers, but the court said it wasn't convinced Partington was trying to mislead or deceive the court.

Partington, 69, who said he is semiretired in Santa Rosa, Calif., and is winding down his Honolulu practice, disputes that he deserves the suspension.

He said he didn't omit facts from his brief and has filed a federal lawsuit in Washington challenging military suspensions.

Partington said he thought the high court would wait until his challenge is resolved, and that its ruling "perpetuates" an injustice against him.

Associate Justice Paula Nakayama dissented from the ruling by three of the five justices, saying she would have imposed a suspension of at least one year. Associate Justice Sabrina McKenna joined in the dissent.

The suspension took effect starting Wednesday.

Credit: Ken Kobayashi

LOAD-DATE: November 14, 2011