

**"CHAPTER 605  
ATTORNEYS**

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## Note

Chapter heading amended by L 1972, c 184, §1(k).

### Law Journals and Reviews

The Hawai'i Law on Legal Malpractice and Liability to Non-Clients. 13 HBJ, no. 13, at 41 (2009).

Pitfalls in the Collaboration of Attorneys and Expert Witnesses. 13 HBJ, no. 13, at 173 (2009).

IOLTA in the New Millenium: Slowly Sinking Under the Weight of the Takings Clause. 23 UH L. Rev. 221 (2000).

Electronic Discovery: A Call for a New Rules Regime for the Hawai'i Courts. 32 UH L. Rev. 153 (2009).

Law Firms Competing on the "Edge of Chaos": Pro Bono's Role in a Winning Competitive Strategy. 35 UH L. Rev. 345 (2013).

" **§605-1 Attorneys, qualifications.** (a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole power to revoke or suspend the license of any such practitioner.

(b) In order to be licensed by the supreme court, a person shall be of good moral character, and shall satisfy such residence and other requirements as the supreme court may prescribe.

(c) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with an order of support as defined in section 576D-1 and has not failed to comply with a subpoena or warrant relating to a paternity or child support hearing.

(d) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education or shall be in compliance with a repayment plan as provided in chapter 436C.

The licensing authority shall not renew or reinstate, or shall deny or suspend any license or application, if the licensing authority has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any

student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education or has failed to comply with a repayment plan.

The licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

(1) Suspend the license;

(2) Deny the application or request for renewal of the license; or

(3) Deny the request for reinstatement of the license, and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. [CC 1859, §1065; am L 1921, c 81, §1; RL 1925, §2304; RL 1935, §3603; am L 1937, c 173, §1; RL 1945, §9701; am L 1945, c 226, §1; am L Sp 1949, c 67, §1; RL 1955, §217-1; HRS §605-1; am L 1972, c 184, §1(a); am L 1976, c 76, §1; am L 1997, c 293, §46; am L 2002, c 226, §9; am L 2003, c 133, §13]

### **Rules of Court**

See RSC rules 1, 2; Hawaii Rules of Professional Conduct.

Child support enforcement, see RSC rules 1.3(h), 17.1.

Disciplinary proceedings, see Disciplinary Board Rules.

Dishonest conduct, fund for client protection, see RSC rule 10.

Foreign law consultants, see RSC rule 14.

Substance abuse, illness, or infirmity, assistance program, see RSC rule 16.

### **Law Journals and Reviews**

On the matter of lawyers appearing before government agencies, see The Lawyer-Legislator and the Canons of Ethics. 1 HBJ, no. 1, at 11 (1959).

For discussion of residence qualification, see The New Resident: Hawaii's Second-Class Citizen. 5 HBJ, no. 3, at 77 (1968).

The Forgotten Case: Preventing Attorney Neglect. 13 HBJ, no. 2, at 11 (1977).

Student Symposium; Legal Malpractice. 14 HBJ, no. 1, at 3 (1978).

Bringing an End to a Scandal. 15 HBJ, no. 1, at 3 (1980).

Overview of the Hawaii Attorney Discipline System. 22 HBJ, no. 2, at 83 (1980).

Ke Kanawai Mamalahoe: Equality in Our Splintered Profession. 33 UH L. Rev. 249 (2010).

## Case Notes

Attorney shall not be employed in matter in which attorney had substantial responsibility while public employee. 397 F. Supp. 1314 (1975).

Power to regulate conduct of attorneys cannot be used to infringe constitutional rights. 397 F. Supp. 1314 (1975).

No conflict between section and disciplinary procedure under Sup. Ct. rule 16. 46 H. 404, 380 P.2d 751 (1963).

Supreme court has inherent power to integrate the bar, establishing compulsory membership and payment of dues. 50 H. 107, 432 P.2d 887 (1967).

Statements to the chief justice or to the supreme court's rule 16 committee or to the bar association's ethics committee concerning attorney's unethical conduct are absolutely privileged. 51 H. 608, 466 P.2d 441 (1970).

Attorney is held to the same ethical standards when acting as a business person or as an attorney and is subject to disciplinary action if attorney fails to maintain those standards in either capacity. 55 H. 47, 515 P.2d 400 (1973).

Supreme court has jurisdiction over matters concerning disciplinary action of members of the bar. 55 H. 47, 515 P.2d 400 (1973).

It is the court's duty to discipline attorneys who indulge in practices inconsistent with high ethical standards. 60 H. 546, 592 P.2d 814 (1979).

Suspension for conduct involving funds of clients undergoing bankruptcy. 61 H. 334, 603 P.2d 562 (1979).

Disciplinary sanction for neglect of clients' cases; mitigating factors. 63 H. 150, 622 P.2d 115 (1981).

Bar examination, foreign attorneys. 44 H. 26, 352 P.2d 607 (1959); 44 H. 90, 352 P.2d 610 (1960); 44 H. 597, 358 P.2d 709 (1961).

Disbarment. For taking fee and not performing services. 3 H. 255 (1871); 59 H. 449, 583 P.2d 333 (1978); 61 H. 223, 601 P.2d 1087 (1979); 62 H. 95, 611 P.2d 993 (1980); 63 H. 382, 629 P.2d 105 (1981). Possibility of impeachment, effect on power of court to disbar. 26 H. 570 (1922). License. 29 H. 422 (1926). Character. 30 H. 588 (1928).

Suspension. 41 H. 403 (1956), aff'd 260 F.2d 189 (1958), rev'd 360 U.S. 622 (1959); 46 H. 404, 380 P.2d 751 (1963). See also 256 F.2d 553 (1956). Violation of canons of professional ethics. 53 H. 165, 488 P.2d 1167 (1971).

" **§605-2 Attorneys; license required.** Except as provided by the rules of court, no person shall be allowed to practice in any court of the State unless that person has been duly licensed so to do by the supreme court; provided that nothing in this chapter shall prevent any person, plaintiff, defendant, or accused, from appearing in person before any court, and there prosecuting or defending that person's, plaintiff's, defendant's, or accused's own cause, without the aid of legal counsel; provided further that in the district courts sections 605-13 and 633-28 shall apply. [CC 1859, §1068; RL 1925, §2305; RL 1935, §3604; RL 1945, §9702; RL 1955, §217-2; HRS §605-2; am L 1972, c 184, §1(b); am L 1989, c 140, §4; gen ch 1992]

### **Rules of Court**

See RSC rule 1.

Registration of attorneys and self-represented parties as judiciary electronic filing system users, see HEFSR rule 4; HRPP rule 4.

### **Law Journals and Reviews**

Ke Kanawai Mamalahoe: Equality in Our Splintered Profession. 33 UH L. Rev. 249 (2010).

### **Case Notes**

Failure to assign counsel before it appears defendant is indigent, not error. 15 H. 139, 143 (1903).

Right of self representation discussed. 53 H. 23, 487 P.2d 286 (1971).

Statutory liquidator of dissolved corporation under §416-124 does not have right to appear pro se, but where there are no funds to hire attorney, liquidator may perform legal services. 53 H. 23, 487 P.2d 286 (1971).

Court's order enjoining one's unauthorized practice of law applies to practice in federal court in absence of regulations by the federal court. 55 H. 458, 522 P.2d 460 (1974).

Generally a corporation cannot represent itself in litigation, but can do so only by an attorney. 60 H. 372, 590 P.2d 570 (1979).

Cited: 5 H. 279, 282 (1885).

" **§§605-3 and 605-4 REPEALED.** L 1972, c 184, §1(j).

" **§605-5 License fee.** The clerk of the supreme court shall exact from every practitioner, upon the practitioner's receiving a license, an admission fee of \$10, for the benefit of the State. [CC 1859, §1073; RL 1925, §2308; RL 1935, §3607; RL 1945, §9705; RL 1955, §217-5; HRS §605-5; gen ch 1985]

" **§605-6 Rules.** The supreme court may prescribe qualifications for admission to practice and rules for the government of practitioners. [CC 1859, §1072; RL 1925, §2309; RL 1935, §3608; RL 1945, §9706; RL 1955, §217-6; HRS §605-6; am L 1972, c 184, §1(c)]

### **Rules of Court**

See RSC rules 1, 2; Hawaii Rules of Professional Conduct.

" **§605-7 Control of action; power to settle.** The practitioners licensed by the supreme court shall have control to judgment and execution, of all suits and defenses confided to them; provided that no practitioner shall have power to compromise, arbitrate, or settle such matters confided to the practitioner, unless upon special authority in writing from the practitioner's client. [CC 1859, §1069; RL 1925, §2310; RL 1935, §3609; RL 1945, §9707; RL 1955, §217-7; HRS §605-7; am L 1972, c 184, §1(d); gen ch 1985]

### **Case Notes**

Where plaintiff argued that this section was controlling in the case, plaintiff's original complaint was filed in federal court under federal question jurisdiction and it was federal law, not state law, that controlled the action. 165 F. Supp. 2d 1133 (2001).

New counsel taking up a case must take it where counsel finds it. 7 H. 168 (1887).

Withdrawal of attorney, only on reasonable notice to client. 46 H. 52, 374 P.2d 665 (1962).

Authority of attorney of record, attempted withdrawal from case. 49 H. 20, 27-29, 407 P.2d 885 (1965).

Where record did not reflect that attorney obtained defendant's written consent to stipulate to a dismissal of condemnation action, it appeared that attorney's act of consenting on behalf of defendant was unauthorized; defendant's failure to contest the settlement constituted a ratification of the settlement and consequently a ratification of the

stipulation and order to dismiss the condemnation action. 77 H. 144, 883 P.2d 65 (1994).

Attorney's failure to obtain written authorization under this section to settle easement action by agreeing to sell property on behalf of appellees did not bar enforcement of agreement. 78 H. 76, 890 P.2d 313 (1995).

Where attorney did not have written authority of client to settle a matter on behalf of client, agreement to settle was "unauthorized". 79 H. 403 (App.), 903 P.2d 708 (1995).

Waiving client's rights. Trial procedure generally. 2 H. 27, 31 (1857). Cannot waive client's right to face witnesses against him. 3 H. 240 (1870). Irregularities may be waived. 5 H. 30 (1885). Client may confirm action taken by attorney without permission of client. 4 H. 23 (1878). Client must act promptly after notice. 25 H. 386 (1920). Charging settlement without client's knowledge in a newspaper charges unprofessional conduct, and when in writing is libelous per se. 23 H. 804, 808 (1917). Compromise not an admission. 25 H. 43, 49 (1919). Attorney has no power to file on behalf of attorney's client, in an action of ejectment a disclaimer of all title, unless authorized by the client. 26 H. 412 (1922). Disqualification. 30 H. 533 (1928). General retainer not power to compromise. 40 H. 108 (1953).

" **§605-8 Practice in all courts; fees.** [(a)] The practitioners shall have the right to practice in all the courts of the State, and to appear therein as attorneys in behalf of persons who may choose to retain them, for the prosecution or defense of actions.

[(b)] Attorney's fees or commissions taxed or allowed by the court shall be collected for the benefit of the attorney as provided by section 507-81. [CC 1859, §1067; RL 1925, §2311; RL 1935, §3610; RL 1945, §9708; RL 1955, §217-8; HRS §605-8; am L 1972, c 184, §1(e); am L 2004, c 48, §3]

#### **Cross References**

Fees, see §§607-14 and 802-5.

#### **Case Notes**

Attorney general, etc., not to engage as private counsel in divorce cases. 35 H. 849 (1941). See §580-44, persons affected with Hansen's disease.

Court approval of substitution of attorney. 43 H. 51 (1958).

Law partner of attorney representing client not prevented from being a witness; nor is attorney prevented from continuing in case. 51 H. 142, 454 P.2d 369 (1969).

Representation of conflicting interests. 59 H. 283, 582 P.2d 195 (1978).

Order granting disqualification of attorney is interlocutory and not appealable without leave of court but writ of mandamus may be available. 61 H. 552, 606 P.2d 1320 (1980).

Authority of attorney. Attorney for any party must show attorney's authority, if demanded. 1 H. 118 (1854); 1 H. 205 (1856); 1 H. 366 (1856).

No implied authority from husband to wife to defend wife in criminal suit brought at husband's instance and fee not recoverable from husband. 5 H. 23 (1883).

A legal right lost by negligence of attorney cannot be restored by court. 9 H. 86 (1893).

Assistant public prosecutor; with consent private attorney may assist prosecution. 19 H. 437 (1909); 20 H. 7 (1910); 20 H. 71 (1910).

Authority of insurance carrier to appeal from award against insured. 32 H. 12 (1931).

Where litigant retains firm of attorneys each member of firm becomes attorney for litigant and appearance of one member is appearance of the firm. 22 H. 245 (1914).

Disbarment proceedings. Contempt of court. 2 H. 27 (1857). Court can compel in disbarment proceedings return of fee or money wrongfully taken. 5 H. 279 (1885). And may punish attorney for wrongful conduct in obtaining fee. 15 H. 220 (1903). But for collecting excessive fee in good faith, no wrongful conduct being shown. 15 H. 244 (1903). Attorney disqualified by representing adverse interests. 30 H. 533 (1928). An account stated between attorney and client may be void if fraud is practiced. 31 H. 517 (1930); 31 H. 599 (1930). Disbarment proceedings; attorney's conduct. Attorney's duty not to misrepresent to court. 31 H. 929 (1931). Equity will compel attorney to convey land purchased by attorney for another when attorney has taken a deed in attorney's own name. 8 H. 57 (1890). Also when deed is obtained from client through undue influence. 13 H. 402 (1901). As to when statements of counsel are privileged. 23 H. 589, 591 (1917).

Fees. Attorney may recover reasonable fees for services rendered; but court may relieve client from oppressive contract. 2 H. 677 (1863). Attorney's fees formerly not allowable in equity. 10 H. 462 (1896); 13 H. 237, 238 (1901); 13 H. 328 (1901). But see 17 H. 489 (1906); 33 H. 456 (1935); 33 H. 660 (1936) (injunction); 34 H. 288 (1937) (interpleader); 34 H. 854 (1939) (partition); 35 H. 595 (1940). Commissions not taxable



in the circuit court on amount of district court judgment. 14 H. 495 (1902). In determining jurisdiction of district court statutory attorney's commissions not included in ad damnum. 14 H. 290, 293 (1902); 15 H. 590 (1904). Guardian may be allowed fee for services as attorney. 15 H. 394 (1904); 35 H. 262 (1939) (guardian ad litem). On amounts of fees allowed in equity and probate proceedings. 13 H. 634 (1901); 14 H. 232, 244 (1902); 15 H. 394 (1904) and cases there cited; 32 H. 943 (1934); 34 H. 263 (1937); 35 H. 473 (1940) (class representation); 37 H. 447 (1947). In cases involving construction of will. 24 H. 573 (1918); 33 H. 666 (1936); 34 H. 376 (1937). Attorney's fees, when allowed out of trust estate. 46 H. 475, 382 P.2d 920 (1963); 47 H. 216, 385 P.2d 828 (1963); 47 H. 629, 394 P.2d 432 (1964); 54 H. 299, 507 P.2d 724 (1973).

In cases involving surety on contractor's bond. 33 H. 607 (1935). Reasonable attorney's fee, determination. 44 H. 10, 352 P.2d 320 (1959).

Generally attorney's fees are not to be awarded as damages or costs unless so provided by statute, stipulation, or agreement. 51 H. 462, 462 P.2d 905 (1969); 53 H. 69, 487 P.2d 769 (1971); 56 H. 111, 530 P.2d 7 (1974); 57 H. 599, 561 P.2d 1286 (1977); 58 H. 606, 575 P.2d 869 (1978).

Generally attorneys' fees not recoverable; but where defendant's wrongful act places plaintiff in litigation with others or causes plaintiff to incur expenses to protect plaintiff's interest, attorneys' fees recoverable. 57 H. 102, 551 P.2d 171 (1976).

Attorney's fee was properly allowed within trial judge's discretion although no evidence was considered. 60 H. 467, 591 P.2d 1060 (1979).

Liability for costs. Under rule of court attorney may be made liable to clerk for court costs but not liable to parties. 11 H. 258 (1898); 12 H. 83 (1899); 22 H. 749 (1915). Attorney mulcted in costs for loose pleadings. 6 H. 269 (1880). Court may require guardian to pay ward's wife counsel fees for defense in proceedings for recovery of child. 9 H. 426 (1894). On revoking order of distribution, court cannot require attorney to pay into court amount paid attorney as fee by client out of amount distributed to such client. 15 H. 13 (1903). Court of law cannot require party to pay opposing guardian ad litem fee. 15 H. 52 (1903). Attorney for unsuccessful party in supreme court not personally liable to successful party for costs. 22 H. 749 (1915). Attorney's fees as costs. 35 H. 907 (1941). Ordinarily counsel fees not taxable as costs. 42 H. 490 (1958); 44 H. 147, 355 P.2d 40 (1960); 44 H. 297, 353 P.2d 820 (1960); 44 H. 365, 355 P.2d 40 (1960); 46 H. 475, 382 P.2d 920 (1963). Order of substitution of attorneys should be conditioned on

reimbursement to original attorney of costs advanced by him and on imposition of charging lien on any recovery to secure payment of his fees. 50 H. 413, 441 P.2d 638 (1968).

" **§§605-9 and 605-10 REPEALED.** L 1972, c 184, §1(j).

" **§605-11 REPEALED.** L 1989, c 140, §3.

" **§605-12 REPEALED.** L 1972, c 184, §1(j).

" **§605-13 District courts, cases involving military vehicles.** Any legal officer of the United States military forces, to the extent that the officer is authorized or required by the officer's respective branch of service, may without license represent military personnel in the district courts in any case which arises out of the driving of a military vehicle. [L 1878, pt of c 31; am L 1886, c 63; RL 1925, §2317; RL 1935, §3615; RL 1945, §9713; am L Sp 1949, c 38, §1; RL 1955, §217-13; HRS §605-13; am L 1972, c 190, §1; am L 1972, c 184, §1(g) as superseded by L 1973, c 33, §1; gen ch 1985]

" **§605-14 Unauthorized practice of law prohibited.** It shall be unlawful for any person, firm, association, or corporation to engage in or attempt to engage in or to offer to engage in the practice of law, or to do or attempt to do or offer to do any act constituting the practice of law, except and to the extent that the person, firm, or association is licensed or authorized so to do by an appropriate court, agency, or office or by a statute of the State or of the United States. Nothing in sections 605-14 to 605-17 contained shall be construed to prohibit the preparation or use by any party to a transaction of any legal or business form or document used in the transaction. [L 1955, c 150, §1; RL 1955, §217-14; HRS §605-14; am L 1969, c 226, §3; am L 1983, c 167, §18; am L 1985, c 270, §4; am L 2001, c 47, §1]

#### **Cross References**

Unauthorized practice of law as criminal contempt of court, see §710-1077.

#### **Rules of Court**

See HRPC rule 5.5.

#### Case Notes

Only bar association or attorney general has standing to bring action for violation of this section. 501 F. Supp. 830 (1980).

Assuming plaintiff collection agency to be engaged in unauthorized practice of law, such conduct does not entitle the debtor defendant any relief. 59 H. 503, 584 P.2d 107 (1978).

Nonattorney agents are not allowed to represent corporations in litigation. 60 H. 372, 590 P.2d 570 (1979).

First offender chargeable only with violation; circuit court had exclusive jurisdiction. 68 H. 226, 708 P.2d 138 (1985).

Where Oregon law firm did not "practice law within the jurisdiction" of Hawaii, it did not violate this section nor §605-17; thus, plaintiff could recover fees under §607-14 for services rendered by firm. 87 H. 37, 951 P.2d 487 (1998).

" **§605-15 [OLD] REPEALED.** L 1975, c 45, pt of §2.

**§605-15 Venue.** Actions for violations of section 605-14 shall be brought in the circuit court for the judicial circuit in which the violation is alleged to have been committed. [L 1975, c 45, pt of §2]

" **§605-15.1 Standing.** The attorney general or any bar association in this State may maintain an action for violations of section 605-14. [L 1975, c 45, pt of §2]

#### Case Notes

Only bar association or attorney general has standing to bring action for violation of §605-14. 501 F. Supp. 830 (1980).

" **§605-15.2 Remedies.** Remedies for the violation of section 605-14 shall include injunctive and declaratory relief, and other existing remedies. In addition, the attorney general may maintain a criminal action against any person who violates section 605-14, the penalties for which are set forth in section 605-17. [L 1975, c 45, pt of §2]

#### Case Notes

Authorization of attorney general and bar association to seek relief under statute exclusive. 59 H. 503, 584 P.2d 107 (1978).

" **§605-16 Judicial powers not affected.** Nothing in sections 605-14 to 605-17 shall diminish, alter, or affect the inherent or statutory power of the supreme court or of any court to institute and hear proceedings against any person for contempt or for violation of rules or orders of court, or affect any rules of any court already in force. [L 1955, c 150, §4; RL 1955, §217-17; HRS §605-16; am L 1979, c 105, §59]

" **§605-17 Penalties.** Any person violating sections 605-14 to 605-16 shall be guilty of a misdemeanor. [L 1955, c 150, §2; RL 1955, §217-15; HRS §605-17; am L 1972, c 184, §1(i); am L 1975, c 45, pt of §2; am L 2001, c 47, §2]

#### **Case Notes**

Penalty for first offense is only a violation. 68 H. 226, 708 P.2d 138 (1985).

Where Oregon law firm did not "practice law within the jurisdiction" of Hawaii, it did not violate §605-14 nor this section; thus, plaintiff could recover fees under §607-14 for services rendered by firm. 87 H. 37, 951 P.2d 487 (1998).