

EXHIBIT "B"

DBF 21

DISCIPLINARY BOARD
OF THE

HAWAII SUPREME COURT

RECEIVED

5 Sept 2017
DAY MONTH YEAR
TIME: 10:50 am BY MM

Nos. 16-0-213, 16-0-151, 16-0-147 and 16-0-326

Before the Disciplinary Board
of the
Hawaii Supreme Court

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

vs.

GARY VICTOR DUBIN,

Respondent.

RESPONDENT'S WITNESS LIST

Gary Victor Dubin 3181
Dubin Law Offices
55 Merchant Street, Suite 3100
Honolulu, Hawaii 96813
Telephone: (808) 537-2300
Facsimile: (808) 523-7733
E-Mail: gdubin@dubinlaw.net
Respondent

ORIGINAL

RESPONDENT'S WITNESS LIST

A. ODC 16-0-213 (ICA)

1. The Honorable Daniel R. Foley
2. The Honorable Alexa D.M. Fujise
3. The Honorable Lisa M. Ginoza
4. Gary Victor Dubin

B. ODC 16-0-151 (Smith)

1. Joe Smith
2. John Hassler
3. Frederick Arensmeyer
4. Long Huy Vu
5. Michael T. Lee
6. Gary Victor Dubin

C. ODC 16-0-147 (Andia)

1. Robert Andia
2. Gary Victor Dubin

D. ODC 16-0-326 (Kern)

1. Michael Harkey
2. Gary Victor Dubin

E. All Cases

1. George Elerick
2. Jane Preece
3. Rebuttal Witnesses

F. Client Character Witnesses

1. Alvin Ishihara
2. Arick Yanagihara
3. Bernadine Sila
4. Bruce Travis
5. Corinne Bouley
6. David Brown
7. David Goodwin
8. Dawn Unga
9. Debra Martin
10. Delmar Guenther/Odie Kind
11. Ken Hagmann
12. Lynne Ciconne
13. Maryellen Markley
14. Michael and Anne Pierce
15. Mike & Madaline Abrams
16. Mike Nekoba
17. Paige Clew Deponte
18. Raymond Lloyd
19. Robert "Bob" McClurg
20. John Waihee
21. Shelley & Kevin St John
22. Steven Ward
23. Teresa Moore
24. Wesley and Lisa Reimann-Siu
25. William "Bill" Boyle

DATED: Honolulu, Hawaii; September 5, 2017.


GARY VICTOR DUBIN
Attorney Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the date first written below a true and correct copy of the foregoing document was duly served by hand delivery to the following persons:

Roy F. Hughes, Esq.
1003 Bishop Street, Suite 2525
Honolulu, Hawaii 96813

Hearing Officer

Bruce B. Kim, Esq.
Yvonne R. Shinmura, Esq.
Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawaii 96813

*Attorneys for Petitioner
Office of Disciplinary Counsel*

DATED: Honolulu, Hawaii; September 5, 2017.


GARY VICTOR DUBIN
Attorney Respondent

DBF 29

DISCIPLINARY BOARD
OF THE
HAWAII SUPREME COURT

RECEIVED

8 September 2017

DAY MONTH YEAR

TIME: 3:10 pm BY AM

Before the
DISCIPLINARY BOARD
of the
HAWAII SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL,	)	ODC	16-0-213
	)		16-0-151
Petitioner,	)		16-0-147
	)		16-0-326
v.	)		
	)		
GARY V. DUBIN,	)		
	)		
Respondent.	)		
_____	)		

PETITIONER'S MOTION IN LIMINE NO. 3
RE: LIMITING RESPONDENT FROM PRESENTING
TESTIMONY FROM 25 CHARACTER WITNESSES

AND

CERTIFICATE OF SERVICE

BRUCE B. KIM 2258
Chief Disciplinary Counsel
YVONNE R. SHINMURA 2310
Deputy Chief Disciplinary Counsel
Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone: (808) 521-4591

Attorneys for Petitioner
OFFICE OF DISCIPLINARY COUNSEL

PETITIONER'S MOTION IN LIMINE 3
RE: LIMITING RESPONDENT PRESENTING
TESTIMONY FROM 25 "CLIENT CHARACTER WITNESSES"

Petitioner Office of Disciplinary Counsel ("Petitioner") moves *in limine* to limit Respondent Gary V. Dubin ("Respondent") from presenting testimony from 25 "Client Character Witnesses" and hereby submits the following in support of its Motion:

I. INTRODUCTION

In Respondent's untimely filed Witness List (filed on September 5, 2017 Disciplinary Board File ("DBF") 21), he names 25 client character witnesses. See DBF 21 Section F, 1 through 25. A cursory review of the two sets of exhibits (four binders untimely submitted on September 1, 2017, and seven binders¹ untimely submitted on September 5, 2017) does not disclose information about these witnesses, i.e. contact information or a description of their proposed testimony.

II. LEGAL ARGUMENT

A. Respondent's Naming of 25 Character Witnesses Is Unfairly Prejudicial and Its Presentation of Cumulative Evidence.

While the Hearing Officer is not bound by the Hawai'i Rules of Evidence ("HRE")², Rule 403 of the Hawai'i Rules of Evidence ("HRE") provides guidance in defining relevant evidence

¹

Petitioner has still not received an Exhibit List identifying by number and description the seven binders of proposed exhibits received from Respondent on September 5, 2017.

² Rule 2.7(c) of the Rules of the Supreme Court of the State of Hawai'i provides in relevant part that "[t]he hearing committee or officer shall be not be bound by the formal rules of evidence, but shall admit only trustworthy evidence."

that should be excluded due to prejudice, confusion, or waste of time:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Clearly, testimony from 25 character witnesses providing the same type of testimony causes undue delay, waste of time, and is the needless presentation of evidence.

III. CONCLUSION

By virtue of the foregoing, Petitioner respectfully requests that the Hearing Officer require Respondent to make an offer of proof as to each witness's testimony, and limit testimony that would be a needless presentation of cumulative evidence and issue an order *in limine* accordingly.

DATED: Honolulu, Hawai'i, September 8, 2017.

OFFICE OF DISCIPLINARY COUNSEL



BRUCE B. KIM

Chief Disciplinary Counsel

YVONNE R. SHINMURA

Deputy Chief Disciplinary Counsel

Attorneys for Petitioner

Before the
DISCIPLINARY BOARD
of the
HAWAII SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL,	)	<u>CONFIDENTIAL</u>
	)	
Petitioner,	)	ODC 16-0-213
	)	16-0-151
v.	)	16-0-147
	)	16-0-326
GARY V. DUBIN,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I hereby certify that a file-stamped copy of PETITIONER'S MOTION IN LIMINE NO. 3 RE: LIMITING RESPONDENT FROM PRESENTING TESTIMONY FROM 25 CHARACTER WITNESSES AND CERTIFICATE OF SERVICE filed on September 8, 2017, was served by hand-delivery on the same date to the following persons at their last known address as set forth below:

ROY F. HUGHES, Esq.
Hughes Storm & Associates
1003 Bishop Street, Suite 2525
Honolulu, Hawai'i

Hearing Officer

GARY VICTOR DUBIN, Esq.
55 Merchant Street, Suite 3100
Honolulu, Hawai'i 96813

Respondent, *Pro Se*

DATED: Honolulu, Hawai'i, September 8, 2017.

OFFICE OF DISCIPLINARY COUNSEL



BRUCE B. KIM
Chief Disciplinary Counsel
YVONNE R. SHINMURA
Deputy Chief Disciplinary Counsel

Attorneys for Petitioner
OFFICE OF DISCIPLINARY COUNSEL

DBF 37

filing party (name, address, telephone & e-mail addr.):

BRUCE B. KIM
Chief Disciplinary Counsel
YVONNE R. SHINMURA
Deputy Chief Disciplinary
Counsel
Office of Disciplinary Counsel
201 Merchant St., Ste. 1600
Honolulu, Hawaii 96813



DISCIPLINARY BOARD
HAWAII SUPREME COURT
201 Merchant St, Ste 1600, Honolulu HI 96813
Tel: (808) 599-1809 - www.odchawaii.com

DISCIPLINARY BOARD
OF THE
HAWAII SUPREME COURT
RECEIVED

20 Sept 2017
DAY MONTH YEAR
TIME: 9:31 am BY UO

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

GARY V. DUBIN

Respondent.

☐ **CONFIDENTIAL** (only if marked; see RSCH 2.22(a))[lead*] Case No. ODC 16-O-213, ☒ et al.

* proved lead case number only. If "et al" is marked, refer to original petition to determine additional case numbers included in this action.

Pre-hearing Conference Date: 09/20/2017

Time: 9:00 a.m.

SECOND PRE-HEARING CONFERENCE ORDER**APPEARANCES:** Hearing Officer/Hearing Committee (HO/HC) by:Roy F. Hughes

** none **

** none **

☒ In Person,☐ In Person,☐ In Person,☐ Telephone,☐ Telephone,☐ Telephone,☐ No Appearance.☐ No Appearance.☐ No Appearance.

Disciplinary Counsel:

Yvonne R. Shinmura

: ☒ In Person, ☐ Telephone, ☐ No Appearance

Respondent's Counsel:

John D. Waihee, III

: ☒ In Person, ☐ Telephone, ☐ No Appearance

Respondent:

Gary V. Dubin

: ☒ In Person, ☐ Telephone, ☐ No Appearance**Formal Hearing (trial):**☐ Initial est. trial time: ADC ☐ hours, ☒ days; Resp. ☐ hours, ☒ days.☒ Formal Hearing shall start at: 9:00 am November 13, 2017☒ Dates for addl hearing days: November 14, 20, 21, 22, 27, 28, 29, 30, 2017 and 12/1/17.☐ 7 month deadline to complete Formal Proceedings [7 mo. fm HO appt]:☒ Record of proceeding kept by: ☒ court reporter, ☐ audio recording, ☐ other☐ ODC's Post-Hearing ☐ Memo of Law and ☐ Proposed FC&R due:☐ Respondent's Post-Hearing ☐ Memo of Law and ☐ Proposed FC&R due:☒ HO/HC Report due 30 days from "conclusion of hearing" [see: DBR 3(f)]:**PRE-TRIAL MOTIONS:**

☒ No pre-trial Motions, other than motions in limine, shall be allowed unless specifically authorized by the HO.
DBR 20(e). *HO has discretion to deny/strike any unauthorized motion.* No response to unauthorized motions are to be filed absent express order of HO.

☐ Motion(s) authorized:

☐ Deadline to file _____, Response due _____, Reply due _____

☐ (additional motions authorized, detailed on attachment)

☒ HO may grant or deny any motion other than dispositive motion. As to dispositive motions, HO may deny, but if inclined to recommend granting, must do so by written FC&R submitted to Board. If Board disagrees, matter will be remanded for formal hearing.

PRE-TRIAL:

☐ ODC's Exhibit list and Exhibits Due:

☐ ODC's Witness List Due:

☐ Respondent's Objections to ODC's Exhibit List and Exhibits Due:

☐ Respondent's Objections to ODC's Witness List Due:

☐ Respondent's Exhibit List and Exhibits Due:

☐ Respondent's Witness List Due:

☐ ODC's Objection to Respondent's Exhibit List and Exhibits Due:

☐ ODC's Objection to Respondent's Witness List Due:

☐ ODC's Pre-Hearing Memo of Law Due:

☐ Respondent's Pre-Hearing Memo of Law Due:

☐ Final Pre-Hearing (pretrial) Conference: ☒ In Person, ☐ Telephone:

☐ Other deadlines (see "Other Orders" below)

STIPULATIONS:

☐ Parties shall meet and confer in person or by telephone and report to HO on the possibility of stipulation as to:

☐ undisputed facts and issues (including conclusions, aggravating and mitigating factors), and/or

☐ complete disposition of formal proceeding;

not less than 15 days prior to the Final Pre-trial Conference.

☐ Parties are encouraged to explore RSCH 2.7(e) settlement.

☐ Case might be suitable for submission to VSC. Deadline to request VSC:

☐ Note: participation in VSC is not grounds to extend 7 month deadline to complete formal.

☐ Deadline to submit signed stipulation 5 days prior to final pretrial conference.

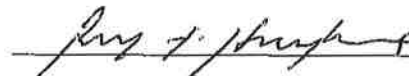
OTHER ORDERS: (list other orders here by topic, attach additional sheets for detail).

1. Petitioner's motions in Limine x 3 granted.
2. Parties stipulate to extend time to complete hearing to 12/2/17.
3. Parties stipulate to extend time for submission of
4. Hearing Officer's Report to January 16, 2018.
5. All other pre-hearing and post-hearing dates remain
6. the same.
- 7.
- 8.
- 9.
- 10.

☒ The original of this Order is to be filed with the Board, and is to be served by Board Clerk as indicated on the attached Certificate of Service, after it is filed and given a DBF number.

IT IS SO ORDERED.

Dated:



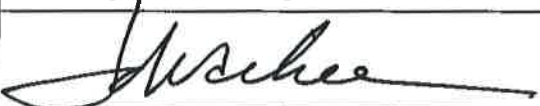
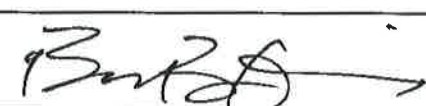
ROY F. HUGHES

Hearing Officer/Committee Chair

APPROVED/ACKNOWLEDGED AS TO FORM:

(Optional) The failure or inability of one or both parties (or counsel) to sign this Order does not in any way invalidate its validity, nor constitute grounds for relief from any dates or obligations set forth herein.

Any objection to the form or content of this Order is waived if a formal written objection is not filed within 10 days of entry.

Respondent/Respondent's Counsel	Petitioner
 John D. Waihee, III ☒ Attorney for Respondent ☐ Respondent pro se E-mail: jwaihee@dubinlaw.net Telephone: (808) 537-2300	 Bruce B. Kim Disciplinary Counsel Office of Disciplinary Counsel E-mail: Bruce@odchawaii.com Telephone: (808) 521-4591

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing document, and any additional sheets have been duly filed with the Disciplinary Board and served on the below named parties and/or attorneys by the method indicated.

Party

Served by
US mail, or hand delivery

John D. Waihee, III, Esq.
Dubin Law Offices
55 Merchant Street, Suite 3100
Honolulu, HI 96813



Respondent ☐ *pro se*; or, ☒ through counsel
courtesy copy* to: jwaihee@dubinlaw.net

Roy F. Hughes, Esq.
Hughes Storm & Associates
1003 Bishop Street, Suite 2525
Honolulu, HI 96813



Hearing Officer/Committee Chair (if any)

courtesy copy* to: rhughes@hsa-hi.com

Bruce B. Kim, Esq.
Disciplinary Counsel
Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813



Attorney for Petitioner

courtesy copy* to: BruceK@odchawaii.com



Other (if any - state roll in case:)

courtesy copy* to:

Dated: 9/20/17

[signature]

[name]

[title]

Uilani D. Okamoto

Filing Clerk

* Parties may be provided with courtesy copies by e-mail, but such does not constitute service under RSCH 2.11(b).