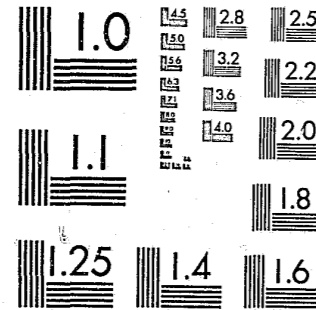


National Criminal Justice Reference Service



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United States Department of Justice  
Washington, D. C. 20531

7/12/83



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# Commission On Judicial Discipline State of Hawaii

First Annual Report  
1980

85741

NCJRS

FIRST ANNUAL REPORT

BT 3 22

of the  
COMMISSION ON JUDICIAL DISCIPLINE

ACQUISITIONS

STATE OF HAWAII

(for period June 1, 1979 to June 30, 1980)

COMMISSION MEMBERS

KAZUHISA ABE, Chairman

ROBERT L. STEVENSON, Vice-Chairman

YOSHIAKI NAKAMOTO

JACKIE MAHI ERICKSON

WILSON P. CANNON, JR.

THE REVEREND CHARLES T. CRANE

J. W. A. BUYERS

P. O. Box 2560  
Honolulu, Hawaii 96804

July 15, 1980

U.S. Department of Justice  
National Institute of Justice

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COMMISSION ON JUDICIAL DISCIPLINE  
State of Hawaii  
Post Office Box 2560  
Honolulu, Hawaii 96804

CHAIRMAN  
Kazuhisa Abe

VICE-CHAIRMAN  
Robert L. Stevenson

July 15, 1980

MEMBERS  
Yoshiaki Nakamoto  
Jackie Mahi Erickson  
Wilson P. Cannon, Jr.  
The Rev. Charles T. Crane  
J. W. A. Buyers

The Honorable William S. Richardson  
Chief Justice  
Supreme Court of Hawaii  
Honolulu, Hawaii 96813

Dear Chief Justice Richardson:

As required by Rule 26 of the Hawaii Supreme Court, the Commission on Judicial Discipline submits herewith a report on its activities covering the period June 1, 1979 to June 30, 1980. Also included for reference purposes are background information relating to the Commission's establishment.

I am pleased to report that the Commission worked well together in its first year of existence. On behalf of the Commission, I would like to commend the Supreme Court for its thoroughness in drafting Rule 26, which establishes the powers of the Commission and its basic operational procedures. Having such an excellent framework within which to work has made our job easier, especially since we are breaking new ground.

Sincerely yours,

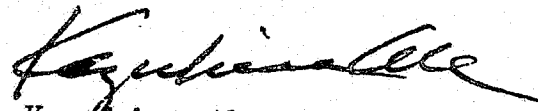
  
Kazuhisa Abe  
Chairman

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Part I. BACKGROUND INFORMATION

Constitutional Mandate

The Commission on Judicial Discipline was mandated by the Amendment of Article VI, Section 5, of the Constitution ratified on November 10, 1978 by Hawaii's voters.

Since statehood, the disciplining of judges had been vested by the Constitution in the Governor's Office. The 1978 Amendment of the Constitution transferred the power for disciplining judges to the Supreme Court and authorized the Court to appoint a Commission on Judicial Discipline to assist it in carrying out its new mandate.

The Constitution adopted with statehood in 1959 provided only for removal or retirement of a judge. The 1978 Amendment broadened the scope of disciplinary actions the Court can impose.

Commission Appointed

The Supreme Court named seven members to the Commission on Judicial Discipline on June 1, 1979. (Exhibit A)

Members of the Commission and their terms of office are:

For three years:

Kazuhisa Abe, a former Associate Justice of the Hawaii Supreme Court and an attorney in private practice, who serves as chairman.

Robert L. Stevenson, recently-retired president of First Insurance Company of Hawaii, vice-chairman.

Yoshiaki Nakamoto, first deputy at the Corporation Counsel's Office of the City and County of Honolulu.

For two years:

Jackie Mahi Erickson, a deputy with the State Attorney General's Office.

Wilson P. Cannon, Jr., chairman of the board and chief executive officer of the Bank of Hawaii.

For one year:

The Reverend Charles T. Crane, pastor of the Church of the Holy Nativity.

J. W. A. Buyers, president and chief executive officer,  
C. Brewer and Co., Ltd.

#### Jurisdiction and Powers

Also on June 1, 1979, the Supreme Court promulgated an amendment to Rule 26 of the Rules of the Supreme Court, establishing the Commission, its powers and procedures.

(Exhibit B)

The Commission has the power to:

Receive information, allegations and complaints;

Make preliminary evaluations;

Screen complaints;

Conduct investigations;

Conduct hearings; and

Recommend dispositions to the Supreme Court concerning allegations of judicial misconduct or physical or mental disability.

Any judge or justice of the State of Hawaii, full-time or part-time, is subject to the jurisdiction of the Commission.

### Grounds for Discipline and Determination of Disability

In general, grounds for misconduct discipline include:

Conviction of a felony;

Willful misconduct in office;

Willful misconduct, which, although not related to judicial duties, brings the judicial office into disrepute;

Conduct prejudicial to the administration of justice.

Determination of disability includes mental and physical disability.

### Complaint Procedure

Any person may initiate an inquiry on the conduct of a judge. Upon receipt of a complaint, the Commission determines if there is sufficient cause to proceed with an inquiry or make a disciplinary recommendation to the Supreme Court.

Even though the Commission may find no further proceedings are necessary, it may recommend to the Supreme Court that the Court:

Issue a private reprimand; or

Admonish the judge that his or her conduct may be cause for discipline; or

Direct professional counseling or assistance for the judge; or

Impose conditions upon the judge's conduct.

### Formal Proceedings

If after conducting formal proceedings the Commission finds clear and convincing evidence in support of a charge against a judge, in each and every case the Commission submits a report to the Supreme Court recommending:

Removal;

Retirement;

Imposition of limitations or conditions on the performance of judicial duties, including suspension with or without pay;

Reprimand or censure; or

Any combination of the above.

### General

Members of the Commission serve without compensation. The Commissioners and special counsels appointed by the



Supreme Court to assist in its work have absolute immunity from suit for all conduct in the course of their official duties.

All proceedings involving allegations of misconduct or disability are confidential unless the Supreme Court enters an order for the imposition of public discipline or the judges request the matter be made public.

There is a provision allowing the Commission to make public statements to clarify a complaint if the subject matter in a case becomes public knowledge through an independent source or through a waiver of confidentiality by the judge.

## Part II. OPERATION OF THE COMMISSION

### Meetings

The Commission held its first meeting on July 19, 1979 to discuss procedures established by Rule 26 of the Rules of the Supreme Court and to establish working procedures when complaints were received. During its first year of existence, the Commission met five times.

### Rule Change

The Commission requested an amendment to Supreme Court Rule 26.2 to clarify the jurisdiction of the Commission on Judicial Discipline and that of the Disciplinary Board of the Supreme Court. The specific purpose of the amendment was to clarify the Commission's exclusive jurisdiction in regard to judges to make clear the extent of any concurrent jurisdiction with the Disciplinary Board, which has the responsibility for investigating complaints against attorneys.

The Supreme Court adopted the rule change on December 5, 1979. (Exhibit C)

### Complaints Received

In fiscal year 1979-80, the Commission received a total of 25 complaints, 17 of which were addressed to the Supreme Court and referred to the Commission.

As of July 1, 1980, all but two of the complaints had been disposed of.

Nineteen complaints were investigated and dismissed because they did not call for disciplinary action.



Three other cases were also dismissed because the complaint did not fall within the jurisdiction of the Commission, the complainants were not specific in their charges, or a request for action was not indicated in the complaint.

One complaint referred to the Commission was not investigated since the judge named in the complaint was preparing to retire.

#### Method of Operation

Upon the receipt of a complaint the Commission meets to review the complaint, discuss individual views, and decide on a course of action or disposition. On the majority of complaints received, the Commission has written to the judges complained of, requesting their comments. On a few occasions, individual members of the Commission were delegated to confer with the complainant or judge and make a report to the Commission. The Commission has made its decisions based on these interviews as well as letters and documents received by the Commission relative to the complaint.

Although no formal actions for misconduct or disability have been taken by the Commission during its first year of existence, on two occasions the Commission included in its letters to judges, concerns expressed by some of the Commissioners relating to the judges' actions.

#### Budget

The budget for operating the Commission during its first year of existence was \$15,000.

#### Training

Commission Chairman Kazuhisa Abe attended a three-day advanced workshop conducted by the Center for Judicial Conduct Organizations in September of 1979.

The Hawaii Commission also became a member of the Center, which is a service of the American Judicature Society. The Center has developed a variety of benefits, which include a quarterly newsletter, resource materials and a soon-to-be-published case digest of judicial disciplinary law.

Staff

During its first year of operation, no staff members were employed. The deputy assigned to The Judiciary by the State Attorney General and the staff attorney of the Office of the Administrative Director of the Courts provided research and legal assistance when requested by the Commission.

Secretarial services were provided by the secretary to the administrative director of the courts.

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1978

In the Matter of the )  
JUDICIAL DISCIPLINE COMMISSION )

ORDER OF APPOINTMENT

Pursuant to Rule 26 of the Rules of this Court,  
IT IS HEREBY ORDERED that:

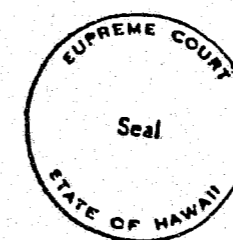
1. KAZUHISA ABE, YOSHIAKI NAKAMOTO, and ROBERT L. STEVENSON be appointed to the Judicial Discipline Commission for terms commencing from the date of this order and expiring May 31, 1982;
2. JACKIE MAHI ERICKSON and WILSON P. CANNON, JR., be appointed to the Judicial Discipline Commission for terms commencing from the date of this order and expiring June 1, 1981;
3. The REVEREND CHARLES T. CRANE and J. W. A. BUYERS be appointed to the Judicial Discipline Commission for terms commencing from the date of this order and expiring June 1, 1980.

IT IS FURTHER ORDERED that KAZUHISA ABE be designated Chairman and ROBERT L. STEVENSON be designated Vice-Chairman of the Judicial Discipline Commission, commencing June 1, 1979, until further order of this Court.

DATED: Honolulu, Hawaii, June 1, 1979.

BY THE COURT:

*William A. Richardson*  
Chief Justice



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Doreen M. P...  
CLERK SUPREME COURT

FILED

EXHIBIT B



IN THE SUPREME COURT OF THE STATE OF HAWAII  
OCTOBER TERM 1978

In the Matter of the Amendment )  
of )  
THE RULES OF THE SUPREME )  
COURT OF HAWAII )

ORDER OF AMENDMENT

Pursuant to Article VI, Section 5, of  
Hawaii State Constitution, as amended November 7, 1978,  
IT IS HEREBY ORDERED that the Rules of this Court, as  
amended, be further amended by adding thereto a new rule  
to be designated "RULE 26", to read as follows:

RULE 26. JUDICIAL DISCIPLINE

26.1 ORGANIZATION OF COMMISSION.

(a) Membership; Chairperson. The supreme court shall  
appoint a commission to be known as the Commission on Judicial  
Discipline which shall consist of seven members; three  
members shall be attorneys licensed to practice in the State  
of Hawaii, one of whom shall be designated by this court as  
chairperson, and four members shall be citizens who are not  
judges, retired judges or lawyers, one of whom shall be  
designated by this court as vice-chairperson.

(b) Terms. All members shall be appointed to staggered  
three-year terms; however, to maintain a commission with  
staggered terms, initial appointments may be for less than  
three years.

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Doreen M. Platt  
CLERK SUPREME COURT

FILED

(c) Compensation. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(d) Quorum; Number of Votes for Action. A majority of the total membership of the Commission shall constitute a quorum for the transaction of business, and the concurrence of a majority of the total membership shall be necessary to validate any action.

(e) Meetings. Meetings of the Commission shall be held at the call of the chairperson or upon the written request of a majority of the members of the Commission.

(f) Annual Report. At least once a year the Commission shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the supreme court.

(g) Non-participation by Members. Commission members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case or orderly operation of the Commission, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary.

#### 26.2 JURISDICTION AND POWERS OF COMMISSION.

(a) Powers in General. The Commission shall have the power to:

- (1) Receive information, allegations, and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;

(4) Conduct investigations;

(5) Conduct hearings; and

(6) Recommend dispositions to the supreme court concerning allegations of judicial misconduct or physical or mental disability of judges.

(b) Persons Subject to Discipline. Any sitting justice or judge, full-time or part-time, shall be subject to the jurisdiction of the Commission.

(c) Subpoena and Discovery.

(1) In matters before the Commission the chairperson may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the judge as witness; and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court.

(d) Rules of Procedure and Forms. The Commission shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings.

#### 26.3 IMMUNITY.

Members of the Commission and special counsel appointed by the supreme court shall be absolutely immune from suit for all conduct in the course of their official duties.

#### 26.4 CONFIDENTIALITY.

(a) In General. All proceedings involving allegations of misconduct by or disability of a judge shall be kept

confidential until and unless the supreme court enters an order for the imposition of public discipline or the judge requests that the matter be public. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceedings.

(b) Disclosure. This provision shall not be construed to automatically deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or to law enforcement agencies investigating qualifications for government employment; such information may be released upon concurrence of the Commission or by order of the supreme court.

(c) Public Statements by Commission. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the Commission may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without pre-judgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his or her comments and criticisms prior to its release, but the Commission in its discretion may release the statement as originally prepared.

#### 26.5 GROUNDS FOR DISCIPLINE.

- (a) In General. Grounds for discipline shall include:
- (1) Conviction of a felony;
  - (2) Willful misconduct in office;

(3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;

(4) Conduct prejudicial to the administration of justice or conduct that brings the judicial office into disrepute;

(5) Any conduct that constitutes a violation of the Code of Judicial Conduct.

(b) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he or she understands it. Claims of error shall be left to the appellate process.

#### 26.6 COMPLAINT PROCEDURE.

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including written complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

(3) Upon request of the chief justice of the supreme court, the Commission shall make an investigation under this rule of the conduct or physical or mental condition of a judge.

(b) Privilege. A qualified privilege shall attach to a complaint submitted to the Commission or testimony related



to the complaint, and any civil action predicated on such complaint instituted against any complainant or witness, or their counsel, shall be subject to said qualified privilege.

(c) Discretionary Notice. Notice that a complaint has been made may be given to the judge named in the complaint.

(d) Screening of Complaints. Upon receipt of a complaint, the Commission shall determine whether such complaint warrants investigation and evaluation. Complaints determined to be frivolous, unfounded or outside the jurisdiction of the Commission shall not be investigated.

(e) Mandatory Notice. After the determination that a complaint warrants investigation and evaluation, notice that a complaint has been made shall be given to the judge.

(f) Preliminary Investigation and Evaluation. Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the Commission shall conduct a prompt, discreet, and confidential investigation and evaluation. The Commission may delegate one of its members to conduct such investigation and evaluation.

(g) Determination. After conclusion of the investigation and evaluation, the Commission shall determine:

(1) That there is insufficient cause to proceed against the judge; or

(2) That there is sufficient information to make a disciplinary recommendation to the supreme court; or

(3) That further proceedings regarding the complaint are necessary.

(h) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient

cause to proceed, the file shall be closed. If previously notified of a complaint, a judge shall be notified that the file has been closed.

(2) A closed file may be referred to by the Commission in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

(i) Dispositions in Lieu of Further Proceedings. Even though the Commission does not find that further proceedings are necessary, it may recommend to the supreme court that the court:

(1) Issue a private reprimand; or

(2) Inform or admonish the judge that his or her conduct is or may be cause for discipline; or

(3) Direct professional counseling or assistance for the judge; or

(4) Impose conditions on the judge's conduct.

#### 26.7 APPOINTMENT OF SPECIAL COUNSEL.

Upon determining that further proceedings should be had, the Commission shall request the supreme court to appoint special counsel to further investigate the matter. Counsel, upon further investigation, shall either report to the Commission that a formal hearing is not necessary or institute formal disciplinary proceedings as provided in Rule 26.9.

#### 26.8 DETERMINATION ON REPORT OF SPECIAL COUNSEL.

Upon receipt of special counsel's report that a formal

hearing is not necessary, the Commission shall determine whether to close the file as provided by Rule 26.6(h) or make a recommendation to the supreme court as provided by Rule 26.6(i).

#### 26.9 FORMAL HEARING.

(a) Complaint or Statement. Formal disciplinary proceedings shall be instituted by special counsel by filing with the Commission a detailed sworn complaint signed by the complainant. If a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by special counsel. Where more than one act of misconduct is alleged, each shall be clearly set forth. A copy of the complaint or statement of allegations shall be served upon the judge.

(b) Answer. The judge shall serve his or her answer upon special counsel and file the original with the Commission within 20 days after the service of the complaint or statement of allegations unless such time is extended by the chairperson. In the event the judge fails to answer, the charges shall be deemed admitted; provided, however, that a judge who fails to answer within the time provided may obtain permission of the chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

(c) Termination After Answer. At any time after service of the answer, the Commission may terminate the proceeding and dismiss the complaint, and shall in that

event give notice to each complainant and to the judge that it has found insufficient cause to proceed.

(d) Notice of Hearing. Following service of the answer the matter may be set for hearing before the Commission. The Commission shall serve a notice of hearing upon special counsel and the judge, or his or her counsel, stating the date and place of the hearing.

(e) Presentation; Cross-Examination; Evidence. At the hearing, the judge shall be entitled to counsel of his or her own choice, shall be entitled to compel by subpoena the attendance and testimony of witnesses and to provide for the inspection of documents, books, accounts, and other records, and shall have a full opportunity to confront and cross-examine the complainant and other witnesses presented by special counsel and to present evidence on his or her own behalf.

The Commission shall not be bound by the formal rules of evidence, but shall admit only trustworthy evidence. The Commission shall not rely upon any evidence outside the formal record in reaching its decision.

(f) Findings and Recommendations. All findings of the Commission shall be supported by clear and convincing evidence. The Commission shall, in every case, submit a report containing its findings and recommendations, together with a record of its proceedings, to the supreme court within 60 days after the conclusion of its hearing. The Commission may recommend to the supreme court any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposition of limitations or conditions on the performance of judicial duties, including suspension with or without pay;
- (4) Reprimand or censure; or
- (5) Any combination of the above sanctions.

#### 26.10 REVIEW BY SUPREME COURT.

After the filing of the Commission's report a copy thereof shall be served on the judge. The judge may file exceptions to the report within 20 days from the date of service of a copy thereof or within an additional period not to exceed 20 days granted by the court for good cause shown. Within 60 days after the filing of the report and the filing of exceptions, if any, the judge shall file an opening brief pursuant to the rule governing civil appeals; and other briefs may be filed and oral argument may be had as therein provided. Upon conclusion of the proceedings, the court shall promptly enter an appropriate order.

#### 26.11 CHARGE AGAINST SUPREME COURT JUSTICE.

Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that the member being charged shall be automatically disqualified. A panel of at least three justices shall hear the matter. In the event that there are less than three justices remaining on the court, the chief justice or the most senior associate justice remaining on the court shall appoint an intermediate

appellate court judge, a circuit court judge, a retired justice of the supreme court, or any combination thereof to sit in the matter.

#### 26.12 INTERIM SANCTIONS.

(a) Suspension for Felony. A judge shall be suspended with pay immediately by the supreme court without necessity of Commission action, upon the filing of an indictment or complaint charging him or her with a felony under state or federal law. Such suspension shall not preclude action by the Commission with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge.

(b) Suspension for Misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his or her ability to perform the duties of his or her office, may be grounds for immediate suspension with pay by the supreme court, without necessity of Commission action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not preclude action by the Commission with reference to the conduct upon which the charge was based.

(c) Misdemeanor Suspension Review. Any judge suspended under Rule 26.12(b) shall be given a prompt hearing and determination by the supreme court upon his or her application for review of the interim suspension order.

(d) Other Interim Suspension.

(1) Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.

(2) Upon a determination by the Commission of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the supreme court.

(e) Disability Suspension. A judge who claims that a physical or mental disability prevents his or her assisting in the preparation of a defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue.

26.13 SPECIAL PROVISIONS FOR CASES INVOLVING MENTAL OR PHYSICAL DISABILITY.

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the Commission shall follow the same procedures that it employs with respect to discipline for misconduct.

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the supreme court shall appoint an attorney to represent him or her.

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his or her medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.

26.14 INVOLUNTARY RETIREMENT.

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the supreme court. If attempts to convince a judge to retire voluntarily fail, then special counsel shall be appointed to file a formal complaint, and the Commission shall hold a hearing and submit a report with recommendations to the supreme court.

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the court.

DATED: Honolulu, Hawaii, June 1, 1979.

*William A. Richardson*

*Thomas S. Ogata*

*Benjamin Menor*

*W. M.*

*Berk T. Kobayashi*

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1979

In the Matter of the Rules )  
of the Supreme Court )  
of the State of Hawaii )

ORDER AMENDING RULE 26.2 OF THE RULES  
OF THE SUPREME COURT OF  
THE STATE OF HAWAII

IT IS HEREBY ORDERED that Rule 26.2 of the Supreme Court of the State of Hawaii be and hereby is amended to read as follows (new material is underlined; deleted material is bracketed):

"26.2 JURISDICTION AND POWERS OF COMMISSION.

(a) Powers in General. The Commission shall have the power to:

- (1) Receive information, allegations, and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Conduct hearings; and
- (6) Recommend dispositions to the supreme court concerning allegations of judicial misconduct or physical or mental disability of judges.

(b) Persons Subject to Discipline. Any sitting justice or judge, full-time or part-time, shall be subject to the jurisdiction of the Commission.

(c) Exclusive Jurisdiction of Commission.

Notwithstanding the provisions of Rule 16.1 of the Disciplinary Rules of the Supreme Court, only this commission shall have the authority to exercise the powers specified in Rule 26.2 with respect to conduct or competence of any justice or judge occurring during the time of, and prior to, his or her tenure on the bench; provided that any proceedings of the Disciplinary Board of the Supreme Court as to conduct or competence which occurred prior to the judicial tenure of the justice or judge, and which proceedings the Disciplinary Board commenced prior to the judicial tenure of the justice or judge, may be concluded; and provided further that a civil or a criminal action may be brought in a court of law against any justice or judge to the extent that such an action may be brought against any person.

[(c)] (d) Subpoena and Discovery.

(1) In matters before the Commission the chairperson may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the judge as witness; and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court[.] to any other court.

[(d)] (e) Rules of Procedure and Forms. The Commission shall have the authority to submit rules of procedure for the approval of the supreme court, and to

develop appropriate forms for its proceedings."

This amendment shall be effective upon adoption.

DATED: Honolulu, Hawaii, December 5, 1979.

William A. Richardson  
Chief Justice

Thomas J. Gots  
Associate Justice

Benjamin Manor  
Associate Justice

H. Lewis  
Substitute Justice

James S. Burns  
Substitute Justice



**END**