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SCAD-22-0000 ____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

DEXTER K. KA'IAMA, Respondent [Bar No. 4249]

ORIGINAL PROCEEDING
(ODC Case No. 18-0339)

**PETITION FOR THE IMMEDIATE SUSPENSION OF
RESPONDENT FROM THE PRACTICE OF LAW PURSUANT TO RSCH RULE 2.12A;**

MEMORANDUM IN SUPPORT;

DECLARATION OF ALANA L. BRYANT, with EXHIBITS 1-42;

AND

CERTIFICATE OF SERVICE

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SCAD-22-0000 ____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

DEXTER K. KA'IAMA, Respondent [Bar No. 4249]

ORIGINAL PROCEEDING
(ODC Case No. 18-0339)

**PETITION AND MEMORANDUM FOR THE IMMEDIATE SUSPENSION OF
RESPONDENT FROM THE PRACTICE OF LAW PURSUANT TO RSCH RULE 2.12A**

The Office of Disciplinary Counsel ("ODC") hereby petitions this Honorable Court for an order directing DEXTER K. KA'IAMA ("KA'IAMA") to appear within ten (10) days of service of the order to inform the Court as to why he should not be immediately suspended from the practice of law for failing to cooperate with ODC's investigation of KA'IAMA's alleged professional misconduct.

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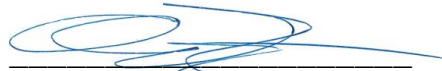
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This Petition is brought pursuant to Rule 2.12A of the Rules of the Supreme Court of the State of Hawai'i ("RSCH") and is supported by the Memorandum in Support, Declaration of Alana L. Bryant and Exhibits 1 through 42 attached thereto.

DATED: October 19, 2022

OFFICE OF DISCIPLINARY COUNSEL



ALANA L. BRYANT
Deputy Disciplinary Counsel

**THE FILING OF THIS PETITION WITH
THE SUPREME COURT OF HAWAI'I IS
HEREBY APPROVED:**



HON. CLIFFORD L. NAKEA (RET).
CHAIRPERSON, DISCIPLINARY BOARD
OF THE HAWAI'I SUPREME COURT

ODC v. Dexter K. Ka'iama, ODC No. 18-0339, PETITION FOR THE IMMEDIATE SUSPENSION OF RESPONDENT FROM THE PRACTICE OF LAW PURSUANT TO RSCH RULE 2.12A

SCAD-22-0000 ____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

DEXTER K. KA'IAMA, Respondent [Bar No. 4249]

ORIGINAL PROCEEDING
(ODC Case No. 18-0339)

MEMORANDUM IN SUPPORT

This Memorandum is submitted in support of the Petition for the Immediate Suspension of Respondent from the Practice of Law Pursuant to RSCH Rule 2.12A, which seeks the issuance of an order directing KA'IAMA to appear and inform this Court as to why he should not be immediately suspended from the practice of law for failing to cooperate during ODC's investigation into his alleged professional misconduct.

I. Description of Respondent's Failure to Cooperate

On November 27, 2018, Petitioner ODC received an ethics complaint against Respondent KA'IAMA. Exhibit¹ ("Ex.") 1.²

¹ All exhibits to this proceeding are filed under seal as they pertain to investigations of disciplinary complaints, presently confidential per RSCH Rule 2.22(a).

² References in this Memorandum and concurrent Declaration to Exhibits ("Ex.") are by Exhibit number (1 through 42), followed

Disciplinary Investigator Josiah Sewell ("DI Sewell") was assigned to investigate said complaint.

On January 24, 2019, DI Sewell sent a letter to KA'IAMA at his Hawai'i State Bar Association ("HSBA")-registered business address, informing him that a complaint had been filed against him, and requesting a response to the complaint by February 25, 2019. Ex. 2. KA'IAMA responded through his attorney, William Sink, on February 22, 2019. Ex. 3. Fifth Amendment concerns were not raised in the letter. *Id.*

On June 12, 2019, DI Sewell sent a letter to Mr. Sink, requesting that KA'IAMA answer approximately 28 follow-up questions related to the ODC complaint against him. Ex. 4. KA'IAMA responded through his new counsel, Stephen Laudig, on July 10, 2019. Ex. 5. The response stated, "[w]e object to having to 'cooperate' in an investigation when there is no 'bill of particulars'." Ex. 5 at 222. The response mentioned the invocation of KA'IAMA's Fifth Amendment privileges, but did not provide any evidence that KA'IAMA was the subject of a criminal investigation. Ex. 5.

On July 17, 2019, DI Sewell sent a letter to Mr. Laudig, reminding him that KA'IAMA's cooperation was required by Rules

by the electronic (pdf) page number of the Exhibit binder, as docketed.

8.1(b) and 8.4(g) of the Hawai'i Rules of Professional Conduct (HRPC). Ex. 6 at 225. DI Sewell clarified that ODC sought to understand KA'IAMA's version of the allegations in the complaint, and noted several rules of the HRPC that may have been violated, when reading the complaint as true. Ex. 6 at 226. KA'IAMA was asked to provide a written response to the questions by August 9, 2019. Ex. 6 at 226.

On August 12, 2019, ODC received a response from Mr. Laudig claiming that "ODC lacks constitutional authority of the matters referred to in Questions 1-5," and provided no response. Ex. 7 at 232. KA'IAMA, through Mr. Laudig, only responded substantively to Questions 6(a)-(c) and (e)-(f). KA'IAMA refused to answer Question 6(d), and gave several lengthy objections to ODC's investigation, including that providing responses would take too long, and that Mr. Laudig and/or KA'IAMA believed ODC had "adopted" the Complainant's "view". Ex. 7 at 240. Mr. Laudig also stated, "Mr. Kaiama doesn't have 'version' [sic] of events. The events occurred as he describes them not as the fevered imagination of Mr. Evers imagines [sic]." Ex. 7 at 237. ODC, however, has still not received a description of events from KA'IAMA, beyond sweeping and confusing generalizations. See Ex. 3; Ex. 5; Ex. 7.

Mr. Laudig did mention "Fifth Amendment concerns" due to KA'IAMA's possible "accomplice liability," but did not specify

whether KA'IAMA was the subject of any criminal investigation.
Ex. 7 at 239.

On August 15, 2019, then-Deputy Chief Disciplinary Counsel Rebecca Salwin ("DCDC Salwin") sent a letter to Mr. Laudig stating:

I have reviewed your letter . . . dated August 12, 2019, in which you state your client's objection to answering ODC's questions about his conduct in this pending matter. If you are disputing the information sought, then please adhere to the procedure for filing a Motion for Protective Order, as outlined in Rule 12(c) of the Rules of the Disciplinary Board. Otherwise, please amend your response to answer the questions that were asked.

Ex. 8. KA'IAMA was given a deadline of August 30, 2019. Ex. 8.

On August 28, 2019, Mr. Laudig sent a letter to DCDC Salwin in which he requested an extension to September 3, 2019 to file a motion for protective order, and continued to object to ODC's inquiries. Ex. 9. Mr. Laudig stated, "[u]ntil the constitutionality of the statute³ is judicially established it seems premature to investigate any allegations of a violation of it." Ex. 9 at 281.

DCDC Salwin responded via email to Mr. Laudig's letter that same day. Ex. 10. The deadline extension was granted, and DCDC Salwin requested to confer in person or by phone with Mr. Laudig regarding KA'IAMA's objections. *Id.*

³ ODC assumes the statute referred to is HRS Ch. 480E.

DCDC Salwin and DI Sewell met with Mr. Laudig on September 4, 2019. DCDC Salwin sent a follow-up email to Mr. Laudig on September 5, 2019 in which ODC indicated three broad categories of inquiry: "1) IOLTA and record-keeping; 2) sufficiently consulting with clients; and 3) adherence to the HRS § 480E statutes." Ex. 11 at 285. ODC "agreed to hold off on the third category for now, particularly due to [KA'IAMA's] ongoing litigation."⁴ Ex. 11 at 285. ODC reiterated its inquiries regarding KA'IAMA's IOLTA and client counseling, with a deadline of September 27, 2019. *Id.* at 285-87.

On September 27, 2019, ODC received a response letter from Mr. Laudig. Ex. 12. Mr. Laudig asserted KA'IAMA's "constitutional rights which limits our ability to answer questions as the answers may end up as part of a criminal prosecution of Mr. Ka'iama." Ex. 12 at 288. He further stated, "[w]e object to be compelled to be a witness in these proceedings because of the ongoing criminal investigation that we have not been assured we are not a target of." Ex. 12 at 289. ODC assumes "we" refers to KA'IAMA.

Mr. Laudig also stated, "[w]e contend that due process of law requires [ODC] to have something more than bare, unsupported and

⁴ At the time, there was still active civil litigation against KA'IAMA concerning the same allegations that were made in the ODC complaint (*State of Hawaii by its Office of Consumer Protection v. Dexter K. Kaiama*, 1CC191000609).

unconfirmed allegations by a sore~loser [sic] lawyer before bringing the coercive power of the state against Mr. Ka`iama." *Id.* The letter went on to acknowledge and object to, but not answer, ODC's inquiries. *Id.* at 289-97.

Mr. Laudig sent follow-up letters to ODC on October 3, 2019, October 11, 2019, and November 8, 2019 giving updates on KA`IAMA's efforts to identify the source of funds in his IOLTA. Ex. 13; Ex. 14; Ex. 15. He did not, however, further address ODC's unanswered inquiries related to client counseling and adherence to the HRS § 480E statutes. Ex. 13; Ex. 14; Ex. 15.

A *subpoena* and *subpoena duces tecum* were issued on November 13, 2019 compelling KA`IAMA to appear in person at ODC's offices on December 18, 2019 at 10:00 a.m. and produce answers to ODC's written questions and copies of specified documents listed in "Attachment A" to the subpoena. Ex. 16. In lieu of appearing in person, KA`IAMA was permitted to mail or email the requested information to DI Sewell by December 18, 2019. *Id.* at 304.

On December 18, 2019, KA`IAMA's counsel sent five emails with attachments to DCDC Salwin, including a Response Cover Letter and Response to Subpoena. Exs. 17-21. In KA`IAMA's Response to Subpoena, he states that he has "reasons to believe Evers has instigated more than one criminal investigation alleging Mr. Ka`iama's involvement in criminal activities based upon Evers'

manufactured false narrative." Ex. 17 at 316. KA'IAMA then states:

We have some reason to believe that at least one, and perhaps, **two of the criminal investigations** involving Mr. Ka'iama, Evers had instigated against [sic] **have terminated with no action.** Evers's malice, bias and desire to do harm know no bounds. Mr. Ka'iama can reasonably assume that Evers, using his office as a state official is persisting in his attempts to have criminal charges brought against Mr. Ka'iama.

Ex. 17 at 316-17 (emphasis added). KA'IAMA presented no basis as to why he believed there to be a criminal investigation or why he assumed that James Evers was "persisting in his attempts to have criminal charges brought against Mr. Ka'iama." *Id.*

KA'IAMA then stated, generally, that he "must assert his constitutional rights until it becomes clear that the promised confidentiality of ODC's proceedings are confirmed by written assurances" Ex. 17 at 317. KA'IAMA went on to provide unclear responses to several inquiries without invoking Fifth Amendment privileges. Then, in response to related question nos. 17-20, he writes "Fifth Amendment" as part of the response. Ex. 17 at 329. KA'IAMA did not substantively respond to, or object to as privileged, question nos. 2 or 28. Ex. 17 at 330.

As KA'IAMA expressed continued concern about the possibility of his being the subject of a criminal investigation, and the

underlying allegations were being litigated in Circuit Court, ODC did not make further attempts to question KA'IAMA as to issues related to client counseling or HRS Ch. 480E, and opted to let the statute of limitations for criminal prosecution under Ch. 480E run.

On June 4, 2020, in *State of Hawaii, by its Office of Consumer Protection v. Dexter K. Kaiama*, 1CC191000609, KA'IAMA stipulated, in part, to be permanently enjoined from (1) providing legal services or other assistance to any "distressed property owner" as the term is defined in HRS § 480E-2; (2) advising any homeowner with regard to a foreclosure lawsuit; (3) appearing as an attorney on behalf of a homeowner whose property is the subject of a foreclosure complaint; (4) advising or assisting a homeowner in filing documents *pro se*; (5) advising a homeowner as to what to say or do in connection with any foreclosure complaint; (6) engaging in any activity that violates HRS Ch. 480E or 481A or the Mortgage Assistance Relief Services Rule, 12 C.F.R. Part 1015, and (7) collecting monies from consumers for Defendant's services beyond what Defendant has already collected. Ex. 22.

In June 2022, Deputy Disciplinary Counsel Alana Bryant ("DDC Bryant") sent an email to KA'IAMA stating that ODC would like to

notice his deposition. KA'IAMA then apparently returned to his original counsel, William Sink.⁵

On July 27, 2022, a Notice of Deposition was issued to KA'IAMA through Mr. Sink. Ex. 23. KA'IAMA was to appear at ODC's offices for the deposition on August 26, 2022 at 9:30 a.m. *Id.* at 346. Mr. Sink communicated to DDC Bryant via telephone that KA'IAMA refused to appear for the deposition. Declaration of Alana L. Bryant ("Decl.") at no. 26. DDC Bryant then issued a subpoena compelling KA'IAMA to appear. Ex. 24. Mr. Sink accepted service of the subpoena on KA'IAMA's behalf. Ex. 25.

On August 25, 2022, KA'IAMA filed a *pro se* "Motion to Dismiss Subpoena Dated August 22, 2022, Pursuant to HRCF 12(B)(2) and the *Lorenzo* Principle, and to Schedule an Evidentiary Hearing, or in the Alternative, Motion for Protective Order" with this Court (SCPW-22-0000511). Ex. 26. DDC Bryant sent an email to Mr. Sink postponing the deposition until after the Supreme Court issued a decision on KA'IAMA's motion. Ex. 27.

On August 31, 2022, this Court concluded that as KA'IAMA was seeking relief from the Disciplinary Board, KA'IAMA's motion was "denied without prejudice to attorney Ka'iama seeking relief from the Disciplinary Board." Ex. 28 at 418; Ex. 29. DDC Bryant then

⁵ While unconfirmed, ODC was informed by KA'IAMA that Stephen Laudig has passed away.

issued a second subpoena compelling KA'IAMA's appearance on September 9, 2022 at 9:30 a.m. Ex. 30.

On September 6, 2022, KA'IAMA filed a *pro se* "Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCF 12(B)(2) and the *Lorenzo* Principle, and to Schedule an Evidentiary Hearing, or in the Alternative, Motion for Protective Order" and a *pro se* "Motion for Request of Judicial Notice in Support of Respondent's Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCF 12(B)(2) and the *Lorenzo* Principle, and to Schedule an Evidentiary Hearing, or in the Alternative, Motion for Protective Order" with the Disciplinary Board. Ex. 31; Ex. 32. DDC Bryant sent an email to Mr. Sink postponing the September 9, 2022 deposition pending the disposition of KA'IAMA's motions. Ex. 33.

On September 13, 2022, the Disciplinary Board issued an Order denying KA'IAMA's motions stating:

In his motions, [KA'IAMA] submits that he is not subject to the jurisdiction of the Hawai'i Supreme Court's Disciplinary Board. To the extent that Dexter Ka'iama wishes to practice law as a licensed attorney in the state of Hawai'i, he is subject to the jurisdiction of the Disciplinary Board that serves as a Special Master for the Hawai'i Supreme Court to investigate and prosecute attorney violations of the Hawai'i Rules of Professional Conduct. (RSCH Rule 2 et seq.) In this context, arguments over the Kingdom of Hawai'i are irrelevant. The motions are DENIED and Dexter Ka'iama, as a voluntary member of the bar of the Hawai'i Supreme Court, is obligated to

cooperate with the Office of Disciplinary Counsel's investigation.

Ex. 34 at 581.

On September 14, 2022, ODC issued a third subpoena compelling KA'IAMA's appearance for deposition on September 27, 2022 at 9:30 a.m. Ex. 35. Mr. Sink accepted service of the subpoena on KA'IAMA's behalf, but stated that KA'IAMA would "**not** be appearing at his deposition on September 27, 2022, at least until all his procedural defenses have been exhausted." Ex. 36 (emphasis in original).

On September 21, 2022, KA'IAMA filed a *pro se* "Motion to Alter or Amend Judgment Dated September 13, 2022, Pursuant to HRCP 59(e)" with the Disciplinary Board. Ex. 37. Aside from making inflammatory remarks about Chairperson Nakea's judicial propriety, KA'IAMA requested that the Board reverse its decision and either dismiss ODC's subpoena or schedule an evidentiary hearing for ODC to provide rebuttable evidence that the Kingdom of Hawai'i does not exist. Ex. 37 at 589-91, 593. DDC Bryant sent an email to Mr. Sink again postponing KA'IAMA's deposition until after the motion was decided. Ex. 38.

On October 5, 2022, the Disciplinary Board issued its Order Rejecting Reconsideration. Ex. 40. On October 6, 2022, ODC

issued a fourth subpoena compelling KA'IAMA to appear for deposition on October 13, 2022 at 9:30 a.m. Ex. 41.

On October 12, 2022, DDC Bryant received an email from Mr. Sink stating, "we would respectfully request you hold off on any requests for a deposition until every appeal and/or writ has made their way through the system . . ." Ex. 42 at 605. DDC Bryant responded, stating, "ODC will not postpone or withdraw the subpoena [for] Mr. Kaiama's deposition that is scheduled for tomorrow, Oct. 13 at 9:30am. Mr. Kaiama is free to pursue any remedy he sees fit, however, ODC must move forward with its disciplinary investigation." Ex. 42 at 604.

On the morning of October 13, 2022, DDC Bryant received a telephone call from Mr. Sink; Mr. Sink stated that KA'IAMA would not appear at the deposition. Decl. at no. 46. At 9:30 a.m., DDC Bryant went on the record at ODC's offices and stated that KA'IAMA was not present and had failed to appear as required by the subpoena issued on October 6, 2022. Decl. at no. 47.

As a result of KA'IAMA's ongoing failure to cooperate with ODC's investigation, ODC submits the instant Petition for the Immediate Suspension of Respondent KA'IAMA from the Practice of Law Pursuant to RSCH Rule 2.12A.

II. Legal Argument

Pursuant to RSCH Rule 2.12A, the Supreme Court of the State of Hawai'i has the power to immediately suspend an attorney from the practice of law if it finds that the attorney has failed to cooperate with an investigation by this Court's Office of Disciplinary Counsel.

From June 12, 2019, the date of DI Sewell's second letter to KA'IAMA, to the date of filing of the instant Petition, ODC has attempted obtain answers from KA'IAMA as to specific areas of inquiry: (e.g., how KA'IAMA obtained clients; whether or how KA'IAMA communicated with clients; who, if anyone, KA'IAMA worked with in representing clients; whether KA'IAMA had a contractual or business relationship with any third party in representing clients; who drafted the written motions that KA'IAMA argued; whether KA'IAMA communicated to any third party regarding his clients; etc.).

In response, KA'IAMA has sometimes invoked his Fifth Amendment privilege against self-incrimination⁶, however, his assertion of the privilege has thus far been improper. The Ninth

⁶ Article I, section 10 of the Hawaii Constitution, which is virtually identical to the Fifth Amendment to the United States Constitution, provides in pertinent part that "no person shall . . . be compelled in any criminal case to be a witness against oneself". Haw. Const. art. I, § 10.

Circuit, in *U.S. v. Pierce*, discussed the standard for when a witness may properly claim the right against self-incrimination:

To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsible answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. The trial judge in appraising the claim must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence.

U.S. v. Pierce, 561 F.2d 735, 741 (1977) (citing *Hoffman v. U.S.*, 341 U.S. 479, 486-87 (1951)). "A proper application of this standard **requires that the Fifth Amendment claim be raised in response to specific questions propounded by the investigating body.**" *Id.* at 741 (emphasis added). "A blanket refusal to answer any question is unacceptable." *Id.* (citing *U.S. v. Bautista*, 509 F.2d 675, 678 (9th Cir. 1975)). Other circuits have nearly identical standards. See *North River Ins. Co., Inc. v. Stefanou*, 831 F.2d 484, 487 (4th Cir. 1987) (one cannot make a "blanket assertion" of privilege); *Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973) ("[FRCP 33(a)] is explicit that blanket refusals to answer based upon the privilege against self-incrimination are not acceptable").

Both KA'IAMA's general assertions of Fifth Amendment privilege in his responses to ODC's written inquiries, and

KA'IAMA's refusal to appear at his deposition on October 13, 2022 were improper blanket assertions of the privilege. KA'IAMA has generally invoked the Fifth Amendment privilege in written responses to the HRS Ch. 480E allegations, but has also confusingly provided partial answers and lengthy discussion regarding the HRS Ch. 480E allegations. Nearly four years after the complaint was made, ODC is not only unsure for what inquiries/questions KA'IAMA intends to invoke the privilege, but is also still unclear as to the underlying events that led to the ODC complaint.

Even if KA'IAMA had properly invoked his Fifth Amendment privilege against self-incrimination, ODC contends that as an attorney, KA'IAMA has no criminal liability under Ch. 480E, and must therefore answer any relevant questions during deposition. The Hawaii Supreme Court has stated that the privilege against self-incrimination does not protect against "remote possibilities of future prosecution out of the ordinary course of law" but is instead "confined to instances where the witness has reasonable cause to apprehend danger from a direct answer." *State v. Yoko Kato*, 147 Hawai'i 478, 497 (2020) (quoting *State v. Kupihea*, 80 Hawai'i 307, 313 (1996)). In *Hoffman v. U.S.*, the U.S. Supreme Court held that "the witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself - his say - so does not of itself establish the hazard of

incrimination." 341 U.S. at 486; see also *Mason v. U.S.*, 244 U.S. 362, 366 (1917) ("the danger to be apprehended must be real and appreciable . . . not a danger of an imaginary and unsubstantial character . . ."); *U.S. v. Apfelbaum*, 445 U.S. 115, 128 (1980) (the privilege can only be applied when "claimant is confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination").

Here, ODC seeks to question KA'IAMA about his limited-scope representation of clients in Hawai'i foreclosure cases. KA'IAMA's conduct may or may not have violated certain sections of Ch. 480E. The only criminal penalties found in Ch. 480E are in section 480E-12. Section 480E-12 (2012) states, "any person who violates section 480E-10 is guilty of a class C felony and, in addition to any other penalties, shall be fined \$10,000." Section 480E-10 (2019) applies only to the conduct of "distressed property consultants." Section 480E-2 Definitions (2016) states, "**'distressed property consultant' shall not include** any of the following: . . . (4) **Attorneys licensed in the State of Hawaii engaged in the practice of law**" (emphasis added). There is a separate section of the Chapter, § 480E-13, that applies specifically to attorneys. There are no criminal penalties related to § 480E-13.

KA'IAMA is a Hawaii-licensed attorney who was engaged in the practice of law during the events that gave rise to the ODC complaint at issue. ODC's reading of the statute leads to the conclusion that KA'IAMA is not at risk of criminal penalty. Moreover, KA'IAMA has produced no evidence to support his belief that he is, or was ever, the subject of a criminal investigation related to the events that gave rise to the ODC complaint.

Finally, even if KA'IAMA were somehow subject to criminal prosecution under Ch. 430E, the statute of limitations for prosecution under § 480E-12 has passed. Section 480E-12 states that persons who violate § 480E-10 are guilty of a class C felony. Time limitations for felonies are found in § 701-108 of the Hawai'i Penal Code. Section 701-108(2) states the time limitation for class A felonies; felonies under part IX of chapter 708; and that **"prosecution for any other felony must be commenced within three years after it is committed."** § 701-108(2)(d) (emphasis added). ODC believes that KA'IAMA has not represented a client such that it would invoke HRS Ch. 480E since at least 2018. It now being 2022, the statute of limitations has run on any class C felony claim, making KA'IAMA's invocation of the privilege against self-incrimination patently unreasonable.

KA'IAMA's continued failure to adequately respond to ODC's inquiries, and his intentional failure to appear at his subpoenaed

deposition, evinces his deliberate and willful disregard of his duty to cooperate with ODC's investigation, in violation of HRPC Rules 8.1(b) and 8.4(g). ODC asserts that KA'IAMA's conduct, with respect to the investigation of this case, falls clearly within the ambits of RSCH Rule 2.12A.

III. Conclusion

Based on the foregoing, ODC respectfully requests that this Court issue an order directing KA'IAMA to appear within ten (10) days of service of said order to inform the Court as to why he should not be immediately suspended from the practice of law due to his failure to cooperate with ODC's disciplinary investigation.

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ODC further requests that upon the Court's determination that KA'IAMA's response to the RSCH Rule 2.12A order is unsatisfactory or upon KA'IAMA's failure to timely file a response, that this Honorable Court enter an order suspending KA'IAMA from the practice of law pursuant to RSCH Rule 2.12A until such time that KA'IAMA complies with discovery so that ODC may complete its investigation, and, following review by a Disciplinary Board member as required by RSCH Rule 2.7(a), determine whether to proceed with formal disciplinary charges, or otherwise dispose of this 2018 complaint.

DATED: October 20, 2022.

OFFICE OF DISCIPLINARY COUNSEL



ALANA L. BRYANT
Deputy Disciplinary Counsel

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL

Petitioner,

vs.

DEXTER K. KA'IAMA, Respondent [Bar No. 4249]

CONFIDENTIAL

ORIGINAL PROCEEDING
(ODC Case No. 18-0339)

DECLARATION OF ALANA L. BRYANT

I, ALANA L. BRYANT, declare:

1. I am, over the age of eighteen years, and employed as a Deputy Disciplinary Counsel for the Office of the Disciplinary Counsel ("ODC").

2. I have access to all files, records, and correspondence in ODC case no. 18-0339 that have been produced in ODC's normal course of business.

3. Attached hereto as Exhibit 1 and filed under seal, is a true and correct copy of the original ODC complaint in ODC case no. 18-0339, dated November 27, 2018.

4. Attached hereto as Exhibit 2 and filed under seal, is a true and correct copy of a letter from Disciplinary Investigator Josiah Sewell ("DI Sewell") to KA'IAMA, dated January 24, 2019.

5. Attached hereto as Exhibit 3 and filed under seal, is a true and correct copy of a letter from William Sink, Esq. to DI Sewell received by ODC on February 22, 2019.

6. Attached hereto as Exhibit 4 and filed under seal, is a true and correct copy of a letter from DI Sewell to Mr. Sink dated June 12, 2019.

7. Attached hereto as Exhibit 5 and filed under seal, is a true and correct copy of a July 10, 2019 email, sans attachment, from Stephen Laudig, Esq. to DI Sewell and KA'IAMA, with "cc" to Mr. Sink, with subject "ODC 18-0339".

8. Attached hereto as Exhibit 6 and filed under seal, is a true and correct copy of a letter from DI Sewell to Mr. Laudig dated July 17, 2019.

9. Attached hereto as Exhibit 7 and filed under seal, is a true and correct copy of a letter from Mr. Laudig to DI Sewell dated August 12, 2019.

10. Attached hereto as Exhibit 8 and filed under seal, is a true and correct copy of a letter from Deputy Chief Disciplinary Counsel Rebecca Salwin ("DCDC Salwin") to Mr. Laudig dated August 15, 2019.

11. Attached hereto as Exhibit 9 and filed under seal, is a true and correct copy of a letter sent via email from Mr. Laudig to DCDC Salwin dated August 28, 2019.

12. Attached hereto as Exhibit 10 and filed under seal, is a true and correct copy of an email sent from DCDC Salwin to Mr. Laudig dated August 28, 2019, with subject "RE: ODC 18-0339".

13. Attached hereto as Exhibit 11 and filed under seal, is a true and correct copy of an email sent from DCDC Salwin to Mr. Laudig, with "cc" to DI Sewell dated September 5, 2019, with subject "ODC 18-0339 - Please Respond by 9/27/19".

14. Attached hereto as Exhibit 12 and filed under seal, is a true and correct copy of a letter from Mr. Laudig to DCDC Salwin dated September 27, 2019.

15. Attached hereto as Exhibit 13 and filed under seal, is a true and correct copy of a letter from Mr. Laudig to DCDC Salwin dated October 3, 2019.

16. Attached hereto as Exhibit 14 and filed under seal, is a true and correct copy of a letter from Mr. Laudig to DCDC Salwin dated October 11, 2019.

17. Attached hereto as Exhibit 15 and filed under seal, is a true and correct copy of a letter from Mr. Laudig to DCDC Salwin dated November 8, 2019.

18. Attached hereto as Exhibit 16 and filed under seal, is a true and correct copy of a subpoena and subpoena duces tecum issued to KA'IAMA with a cover letter from DCDC Salwin, all dated November 13, 2019.

19. Attached hereto as Exhibit 17 and filed under seal, is a true and correct copy of an email, sans attachments, from Mr. Laudig to DCDC Salwin and KA'IAMA, with "cc" to DI Sewell, dated December 18, 2019, with subject "Cover letter and Response, Email 1 of 5".

20. Attached hereto as Exhibit 18 and filed under seal, is a true and correct copy of an email, sans attachments, from Mr. Laudig to DCDC Salwin and KA'IAMA, with "cc" to DI Sewell, dated December 18, 2019, with subject "2 of 5".

21. Attached hereto as Exhibit 19 and filed under seal, is a true and correct copy of an email, sans attachments, from Mr. Laudig to DCDC Salwin and KA'IAMA, with "cc" to DI Sewell, dated December 18, 2019, with subject "3 of 5".

22. Attached hereto as Exhibit 20 and filed under seal, is a true and correct copy of an email, sans attachments, from Mr. Laudig to DCDC Salwin and KA'IAMA, with "cc" to DI Sewell, dated December 18, 2019, with subject "4 of 5".

23. Attached hereto as Exhibit 21 and filed under seal, is a true and correct copy of an email, sans attachments, from Mr. Laudig to DCDC Salwin and KA'IAMA, with "cc" to DI Sewell, dated December 18, 2019, with subject "5 of 5".

24. Attached hereto as Exhibit 22 and filed under seal, is a true and correct copy of a "Final Judgment and Stipulated

Permanent Injunction" filed in *State of Hawaii by its Office of Consumer Protection v. Dexter K. Kaiama*, 1CC191000609 on June 4, 2020.

25. Attached hereto as Exhibit 23 and filed under seal, is a true and correct copy of transmittal to KA'IAMA containing "Office of Disciplinary Counsel's First Amended Notice of Deposition Upon Oral Examination of Respondent Dexter K. Kaiama" dated July 27, 2022.

26. Sometime after July 27, 2022 and before August 22, 2022, I received a telephone call from Mr. Sink wherein he communicated that KA'IAMA refused to appear for the deposition that was noticed for August 26, 2022.

27. Attached hereto as Exhibit 24 and filed under seal, is a true and correct copy of a subpoena sent from ODC to KA'IAMA dated August 22, 2022.

28. Attached hereto as Exhibit 25 and filed under seal, is a true and correct copy of an email from Mr. Sink to DDC Bryant dated August 23, 2022, with subject "CONFIDENTIAL - ODC No. 18-0339 (Kaiama)".

29. Attached hereto as Exhibit 26 and filed under seal, is a true and correct copy of KA'IAMA's "Motion to Dismiss Subpoena Dated August 22, 2022, Pursuant to HRCP 12(B)(2) and the *Lorenzo Principle*, and to schedule an Evidentiary Hearing, or in the

Alternative, Motion for Protective Order" filed in SCPW-22-0000511 on August 25, 2022.

30. Attached hereto as Exhibit 27 and filed under seal, is a true and correct copy of an email from DDC Bryant to Mr. Sink dated August 25, 2022, with subject "CONFIDENTIAL - ODC No. 18-0339 (Kaiama)".

31. Attached hereto as Exhibit 28 and filed under seal, is a true and correct copy of an Order filed on August 31, 2022 in SCPW-22-0000511.

32. Attached hereto as Exhibit 29 and filed under seal, is a true and correct copy of an Order of Clarification filed on September 2, 2022 in SCPW-22-0000511.

33. Attached hereto as Exhibit 30 and filed under seal, is a true and correct copy of an email from DDC Bryant to Mr. Sink dated August 31, 2022, with subject "CONFIDENTIAL - subpoena".

34. Attached hereto as Exhibit 31 and filed under seal, is a true and correct copy of KA'IAMA's "Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCP 12(B)(2) and the *Lorenzo* Principle, and to Schedule an Evidentiary Hearing, or in the Alternative, Motion for Protective Order" filed on September 6, 2022 with the Disciplinary Board.

35. Attached hereto as Exhibit 32 and filed under seal, is a true and correct copy of KA'IAMA's "Motion for Request of

Judicial Notice in Support of Respondent's Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCP 12(B)(2) and the *Lorenzo Principle*, and to Schedule an Evidentiary Hearing, or in the Alternative, Motion for Protective Order" filed on September 6, 2022 with the Disciplinary Board.

36. Attached hereto as Exhibit 33 and filed under seal, is a true and correct copy of an email from DDC Bryant to Mr. Sink dated September 7, 2022, with subject "CONFIDENTIAL - subpoena".

37. Attached hereto as Exhibit 34 and filed under seal, is a true and correct copy of an "Order Denying Motions" issued by the Disciplinary board on September 13, 2022.

38. Attached hereto as Exhibit 35 and filed under seal, is a true and correct copy of a subpoena sent from ODC to KA'IAMA dated September 14, 2022.

39. Attached hereto as Exhibit 36 and filed under seal, is a true and correct copy of an email from Mr. Sink to DDC Bryant dated September 15, 2022, with subject "CONFIDENTIAL - Subpoena (3)".

40. Attached hereto as Exhibit 37 and filed under seal, is a true and correct copy of KA'IAMA's "Motion to Alter or Amend Judgment Dated September 13, 2022, Pursuant to HRCP 59(e)" filed on September 21, 2022 with the Disciplinary Board.

41. Attached hereto as Exhibit 38 and filed under seal, is a true and correct copy of an email from DDC Bryant to Mr. Sink dated September 26, 2022, with subject "CONFIDENTIAL - Subpoena (3)".

42. Attached hereto as Exhibit 39 and filed under seal, is a true and correct copy of ODC's "Response to Respondent Dexter K. Ka'iama's Motion to Alter or Amend Judgment Dated September 13, 2022, Pursuant to HRCP 59(e)" filed on October 3, 2022 with the Disciplinary Board.

43. Attached hereto as Exhibit 40 and filed under seal, is a true and correct copy of the Disciplinary Board's "Order Rejecting Reconsideration" filed on October 5, 2022.

44. Attached hereto as Exhibit 41 and filed under seal, is a true and correct copy of a subpoena sent from ODC to KA'IAMA dated October 6, 2022.

45. Attached hereto as Exhibit 42 and filed under seal, is a true and correct copy of an email string between DDC Bryant and Mr. Sink, with emails sent on October 6, 2022 and October 12, 2022, with subject "CONFIDENTIAL - Subpoena (4)".

46. On the morning of October 13, 2022, I received a telephone call from Mr. Sink. During the telephone call, Mr. Sink stated that KA'IAMA would not appear at the October 13, 2022 deposition.

47. At 9:30 a.m. on October 13, 2022, I went on the record at ODC's offices and stated that KA'IAMA was not present at the scheduled deposition and had failed to appear as required by the subpoena issued on October 6, 2022.

I, ALANA L. BRYANT, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, October 20, 2022.


ALANA L. BRYANT

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

DEXTER K. KA'IAMA, Respondent [Bar No. 4249]

ORIGINAL PROCEEDING
(ODC Case No. 18-0339)

CERTIFICATE OF SERVICE

1. **PETITION FOR THE IMMEDIATE SUSPENSION OF RESPONDENT FROM THE PRACTICE OF LAW PURSUANT TO RSCH RULE 2.12A**
2. **MEMORANDUM IN SUPPORT OF PETITION**
3. **DECLARATION OF ALANA L. BRYANT, with EXHIBITS 1-42;**

I hereby certify that a true and correct copy of the above listed documents were duly served on those individuals or entities identified on the below service list, as indicated by either (1) JEFS/JIMS electronic filing, (2) by personal service, or by (3) U.S. First Class mail, postage prepaid.

DATED: October 20, 2022.

OFFICE OF DISCIPLINARY COUNSEL



ALANA L. BRYANT

Deputy Disciplinary Counsel

SERVICE LIST:

By JEFS/JIMS electronic filing:

BRADLEY R. TAMM (bradley.r.tamm@dbhawaii.org)
ALANA L. BRYANT (alana.l.bryant@dbhawaii.org)
WILLIAM SINK (jennifer@wfsinkl.com)
PHILIP LOWENTHAL (phl@lowenthal-hawaii.com)

By personal service:

Petition to be served on Respondent per RSCH Rule 2.11(a)

By U.S. First Class mail, postage prepaid:

WILLIAM F. SINK, ESQ.
735 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Counsel for Respondent