CONCURRING OPINION BY MOON, C.J.
IN WHICH LEVINSON, J., JOINS

I agree with the award of reasonable attorneys' fees in the amount of $23,515.70, as opposed to the requested amount of $139,121.16, and the decision to refer this matter to the Office of Disciplinary Counsel (ODC). However, I write separately because I believe it is unfair to the parties and the attorneys for the majority to merely state its conclusions that 105 hours (or $23,515.70 in attorney's fees) is reasonable and 454.9 hours (or $115,966.16) is not.

I. DISCUSSION

A. DFS' Requested Attorneys' Fees Are Unreasonable

HRS § 607-14 authorizes this court to award attorneys' fees "that the court determines to be reasonable[.]" The burden is on the prevailing party to prove such fees were reasonably and necessarily incurred. See Smothers v. Renander, 2 Haw. App. 400, 408, 633 P.2d 556, 563 (1981); see also Sharp v. Hui Wahine, Inc., 49 Haw. 241, 247, 413 P.2d 242, 246 (1966). The United States Supreme Court has stated that:

> The most useful starting point for determining the amount of a reasonable fee is the number of hours *reasonably* expended on the litigation multiplied by a *reasonable* hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. . . .
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> The . . . court also should exclude from this initial fee calculation hours that were not "reasonably expended." Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary[.]

Hensley v. Eckerhart, 461 U.S. 424, 433-34 (1983) (citation omitted) (emphases added); see also Chun v. Bd. of Trustees of the Employees' Retirement Sys. of the State of Hawai'i, 92 Hawai'i 432, 434 n.1 992 P.2d 127, 129 n.1 (2000) ("The 'lodestar' equals the number of hours reasonably spent on a case multiplied by a reasonable hourly rate[.]" (Citation omitted)).

In determining "the number of hours reasonably expended on the litigation," the majority simply concludes:

> [A]fter a thorough examination of the submissions of DFS and Paiea as well as a careful review of the record before us, we conclude that the DFS has demonstrated that it expended 105 reasonable and necessary hours on the underlying appeal.

Majority op. at 13. DFS requested a total of 559.9 hours of attorneys' fees incurred on appeal. Thus, based on the 105 hours awarded as reasonable, the majority has "exclude[d] from [the] initial fee calculation hours that were 'not reasonably expended.'" Hensley, 461 U.S. at 434. The majority, however, neglects to explain its reasoning for excluding the hours it deemed to be unreasonable. Where the issue involves a request for attorneys' fees incurred on appeal, our responsibility is no different than those of trial judges, whom we have previously "remind[ed] . . . to specify the grounds for awards of attorneys' fees and the amounts awarded with respect to each ground." Price v. AIG Ins. Co., 107 Hawai'i 106, 113, 111 P.3d 1, 8 (2005). It is only fair to the parties and attorneys involved, especially where, as here, the requested fees are substantially reduced, and regardless of whether or not the matter is referred to the ODC

for investigation.[1] Moreover, an explanation of the reasons for substantially reducing a fee request that, in turn, prompts a referral to the ODC is beneficial to the members of the bar, in

[1] The majority believes that Price is "inapposite authority," majority opinion at 13 n.7, because, inter alia, the reference to specifying the "grounds" for fee awards referred to "the legal basis . . . such as assumpsit or tort." Id. In Price, the issue of apportioning fees between assumpsit and non-assumpsit claims was clearly before the trial court; however, we could not review the ultimate award because the trial court had failed to provide an explanation as to how it resolved the apportionment issue. As importantly, the trial court failed to provide an explanation for reducing the fee request of $21,386 to $20,000. Because the trial court failed to provide an explanation, i.e., to specify the grounds, we were unable to determine whether the fees were reduced based on an apportionment between assumpsit and non-assumpsit claims and/or whether the fees were reduced because the unawarded fees were deemed unreasonable, which prompted the remand for a redetermination of the fee request. Thus, when reading the entire discussion in context, our reminder to the trial judges to "specify the grounds" could not be reasonably interpreted as a directive to merely state "the legal basis."

Additionally, the majority cites to Finley v. The Home Insurance Group, 90 Hawai'i 25, 975 P.2d 1145 (1998), and Ranger Insurance Co. v. Hinshaw, 103 Hawai'i 26, 79 P.3d 119 (2003), for the proposition that a detailed explanation of the rationale underlying a reduction in attorneys' fees is not necessary as long as there is support in the record. Majority op. at 13 n.7. I agree with the general proposition that an explanation for reducing a fee award would not be necessary when the record provides an apparent or discernible rationale -- as was the case in Finley and Ranger. In Finley, it was undisputed that defendant, as the prevailing party, was entitled to an award of fees. Finley, 90 Hawai'i at 38, 975 P.2d at 1145. Defendant's fee request, however, included work related to an issue upon which it did not prevail, i.e., plaintiffs' breach of settlement agreement claim (count V), which was resolved in favor of the plaintiffs through the defendant's payment of $100,000. Id. This court stated: "Because the billing statements submitted by [defendant] apparently requested work on this claim [(count V)], the circuit court had sufficient justification for reducing the award from the amount of fees requested by [defendant]." Id. at 39, 975 P.2d at 1146. Thus, in Finley, the rationale for reducing the fee award was apparent. Likewise, in Ranger, it was apparent from the record that appellant was entitled to fees pursuant to HRS § 607-14. Therefore, this court held that the circuit court erred in not awarding appellant attorneys' fees based on its finding that appellant had failed to establish valid legal grounds for the fee request. Consequently, the court in Ranger remanded the case for a determination of fees pursuant to HRS § 607-14.

The reduction of fees in the case at bar, however, is not simply a matter of eliminating hours that relate to a single claim or count; nor is it a matter of a party failing to sustain its burden of establishing a valid legal basis for the requested fees when such basis existed. Rather, this is a case that requires a closer scrutiny of the work described and whether the work was reasonable and necessary in light of the issues involved on appeal. Therefore, it can hardly be said that the record in this case provides an apparent or discernible rationale for the majority's conclusory statement that $23,515.70 in attorneys' fees is reasonable and $115,966.16 is not.

general. See Akinaka v. Disciplinary Bd., 91 Hawai'i 51, 57-58, 978 P.2d 1077, 1088-89 (1999) (citations omitted). In my view, the following examples illustrate the reasoning underlying the exclusion of 454.9 hours.

The itemized bills attached to the request indicate that the Stubenberg firm spent 205.7 hours (25.7 eight-hour work days), amounting to $52,086.42 in fees, on the appeal between the time Paiea (the appellant) filed its notice of appeal and its statement of jurisdiction. During that time, however, DFS (the appellee) did not file any documents in this court and Paiea filed only one document: a request for transcripts. Nearly 40 of the 205.7 hours (five eight-hour work days) were expended researching appellate procedure, including: (1) "legal research regarding procedure on appeal" (up to 3.2 hours);[2] (2) "legal research regarding restricting issue on appeal" (up to 5.9 hours); (3) "legal research regarding extent of appeal jurisdiction" (up to 6.5 hours); (4) "research [of] law regarding record on appeal" (up to 4.5 hours); (5) "research [of] law regarding record on appeal; stay of appeal; HRCP & HRAP" (up to 6.5 hours); (6) "legal research"[3] (3.8 hours); (7) "legal research regarding appellate procedure" (4.8 hours); and

[2] I note that the itemized bills are insufficiently detailed for this court to determine exactly how much time was spent conducting this research. The bill merely states that 3.2 hours were spent "[r]eview[ing] appeal materials from Paiea; legal research regarding procedure on appeal[.]" As such, although the Stubenberg firm invested "up to" 3.2 hours researching appellate procedure, it is impossible to determine precisely how many hours were dedicated to such research.

[3] The itemized bills do not indicate which issues were researched.

(8) "outlin[ing] appellate procedure" (5.5 hours). The nature of this appeal was not complex and clearly did not warrant forty hours researching the appellate rules and procedure. Thus, absent any explanation by DFS or its attorneys as to the necessity and reasonableness of such research, most of the research on appellate procedure was unnecessary.

Additionally, during this time period, the Stubenberg firm charged DFS for reviewing: (1) "appeal materials from Paiea" (up to 3.2 hours); (2) "various materials from McCorriston" (2.5 hours); (3) "material for record on appeal" (3.8 hours); (4) "materials regarding appeal" (up to 5.9 hours); (5) "pleadings from McCorriston" (2.5 hours); (6) "all documents and correspondence; letter to apposing [sic] counsel" (5.5 hours); and (7) "letter from McCorriston [and] letter from Kemp" (up to 6.5 hours), totaling nearly 29 hours (3.6 eight-hour work days). Inasmuch as the firm represented DFS before the circuit court, much of the time spent re-reviewing "all documents and correspondence" appears excessive. Further, because Paiea had not yet filed its opening brief and, thus, the Stubenberg firm did not know for certain which issues would be raised on appeal, I question why the firm spent nearly 16 hours (two eight-hour work days) researching "operating expenses," "contract construction," "lease construction," "fixed CAM provisions," "consequences of payment of excess CAM," and "contract/lease issues."

The Stubenberg firm billed 4.5 hours for researching the "collection of attorney fees" even before Paiea filed its jurisdictional memorandum. The fact that the firm could not have anticipated which issues would be raised on appeal or whether DFS would prevail on appeal leads me to conclude that the research regarding attorneys' fees was related to fees incurred before the circuit court. Subsequently, the Stubenberg firm again billed DFS up to 5.2 hours for "legal research regarding procedure to recover attorney fees in [c]ircuit [c]ourt." (Emphasis added.) Such time spent researching the issue of attorneys' fees incurred in the circuit court is clearly not recoverable as attorneys' fees incurred on appeal.

It is also noteworthy that, during this appeal, DFS filed only three documents in this court: (1) the motion to dismiss; (2) a one-page letter informing Paiea of its request for extension of time to file its answering brief; and (3) the sixteen-page answering brief. According to the itemized bills, the Stubenberg firm expended a total of 100.4 hours (12.6 eight-hour work days) preparing and drafting the motion to dismiss and 227.2 hours (28.4 eight-hour work days) drafting its answering brief (excluding time claimed as research). In the motion to dismiss, DFS challenged Paiea's attempt to vacate the appraisal report based on Paiea's failure to "file a motion to vacate, modify or correct the award[.]" In its answering brief, DFS repeated that argument and contended that Paiea failed to prove

the appraiser was partial and that "all matters of indefiniteness [of the appraisal report] alleged by Paiea . . . are hopelessly intertwined with vacating an award[.]" All three of these assertions are not novel issues and were fully briefed and argued before the circuit court in the parties' pleadings and at the November 14, 2002 and January 27, 2003 hearings.

Lastly, the Stubenberg firm claims to have spent more than an entire work day (8.8 hours) on its request for an extension of time to file its answering brief. Specifically, the firm alleges that it spent at least 6.5 hours researching the procedure for requesting such an extension,[4] which required only that it review HRAP Rule 29 (2000), clearly labeled "Extensions of time for briefs."[5] The firm also claims to have spent 0.80 hours (48 minutes) requesting by telephone an "[o]ral extension

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[4] DFS additionally notes that it spent approximately 3.2 hours conducting "legal research regarding procedure on appeal," 4.8 hours conducting "legal research regarding appellate procedure," and 5.5 hours "[o]utlin[ing] appellate procedure." It is unclear whether any portion of this time was spent researching the extension of time to file its answering brief.

[5] HRAP Rule 29 provides in its entirety:

> **(a) By the Appellate Clerk.** Upon timely (1) oral request, or (2) written motion, or (3) letter request by a party, the appellate clerk shall grant one extension of time for no more than 30 days for the filing of an opening or answering brief and no more than 10 days for the filing of a reply brief. The appellate clerk shall note on the record that the extension was granted and the date the brief is due. The requesting party shall notify all other parties that the extension was granted and shall file a copy of the notice in the record. A request is timely only if it is received by the appellate clerk within the original time for filing of the brief.
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> **(b) By the Appellate Court.** Motions for further extensions of time to file briefs will be approved by a judge or justice only upon good cause shown.
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> The submission of a request or motion for extension does not toll the time for filing a brief.

. . . via supreme court clerk." That same day, the Stubenberg firm also expended 1.5 hours (90 minutes) "[d]raft[ing]/send[ing] letter notice regarding extension" to Paiea.[6] In sum, the Stubenberg firm billed more than one eight-hour work day to obtain a simple, standard extension of time to file DFS' answering brief and to send a three-sentence letter, notifying Paiea of the new filing deadline.

B. Reasonable Attorneys' Fees

Based on the two-volume record on appeal, the documents filed in this court, and the issues presented by the parties, I believe that the following breakdown is reasonable and reflects the work necessary to prosecute the appeal: (1) twenty-four hours of work relating to the motion to dismiss; (2) fifty-six hours of work relating to the answering brief; (3) 0.5 hours of work relating to the letter to Paiea, see supra note 6; and (4) 24.5 for all remaining work (reviewing the record on appeal and appellate rules and procedure, reviewing correspondence between the parties, conferences, etc.).

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[6] The letter sent to Paiea stated in its entirety:

> Dear Becky:
> Pursuant to HRAP 29(a), I made an oral request for a 30-day extension of time for filing our Answering Brief in the above matter. This letter is to notify you that the Civil Documents Clerk granted my request. The new filing deadline for our Answering Brief is August 12, 2003.
> Sincerely,
> STUBENBERG & DURRETT
> /s/
> Jon A. Zahaby

I also agree that the average hourly rate of $215 is appropriate and, consequently, agree with the award of $23,515.70 in attorneys' fees to DFS.

C. Referral to the ODC Requires Sufficient Facts

Canon 3(D)(2) of the Revised Code of Judicial Conduct provides:

> A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Hawai'i Rules of Professional Conduct [(HRPC)] should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the [HRPC] that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority [i.e., the ODC)].

In so doing, "[e]thics complaints submitted to ODC must contain sufficient facts to enable ODC to conduct a thorough investigation." Akinaka v. Disciplinary Bd., 91 Hawai'i 51, 56 n.6, 978 P.2d 1077, 1082 n.6 (1999). As previously stated, our responsibility to specify the basis for granting or denying a request for attorneys' fees, in whole or in part, is no different than those of trial judges. See Price, 107 Hawai'i at 113, 111 P.3d at 8. The reason is obvious -- it not only gives the parties and their attorneys an understanding of the basis for the court's ruling, but facilitates review on appeal. It is important to note, however, that, when concurrently referring a matter that involves a ruling on a request for attorneys' fees to the ODC, I recognize that the ODC's "review" is not for the purpose of determining the correctness of the fees awarded. The focus of the ODC's inquiry is whether counsel's conduct and the fees charged comport with the requirements of the HRPC.

Obviously, one of the facts to be considered by the ODC in its investigation of this matter will be the significant reduction imposed by this court in awarding fees to the prevailing party. The majority's conclusory statement that $23,515.70 in attorneys' fees is reasonable, but the total amount requested ($139,121.16) is not, without any explanation, forces the ODC to speculate as to the grounds upon which this court deemed a significant portion of the requested fees to be unreasonable. Those grounds, discussed supra in sections I.A. and I.B., provide the underlying support for the ultimate award of attorneys' fees in this case. Consistent with the general principle espoused in State v. Mata, 71 Haw. 319, 325, 789 P.2d 1122, 1125 (1990) (stating that "[w]e cannot pass in these proceedings on whether or not the matters referred to [ODC] involved unprofessional conduct"), the explanation provided in support of significant reduction in attorneys fees are not to be construed as a commentary or opinion as to whether the conduct of counsel or the fees charged in this case violated the HRPC and, therefore, requires discipline. Clearly, the duty to investigate and make a recommendation to this court regarding discipline, if any, lies solely with the ODC. Providing an explanation of the reasons underlying this court's substantial reduction of the requested fees that, in turn, also provides insight as to the basis for the ODC referral, is no different an approach than that taken by this court in prior cases.

Whenever this court has made a referral to the ODC, it has provided some explanation for the referral, including citation to the HRPC, as well as a detailed description of the background of the case, often quoting from transcripts, pleadings, and exhibits contained in the record on appeal. Moreover, the explanations have also included the kinds of conclusions regarding counsel's conduct that the majority characterizes as "problematic explanations." See majority op. at 20 n.14. It is important to keep in mind that, in many instances, the explanations and conclusions -- although providing insight for a referral to ODC -- were discussed in the context of resolving the merits of the appeal itself. For example, in State v. Tafoya, 91 Hawai'i 261, 982 P.2d 890, (1999), we provided numerous excerpts of defendant's trial testimony, see id. at 264-66, 982 P.2d 893-95, regarding his prior convictions and evidence of his membership in a youth gang or unconvicted arrests that were intentionally introduced to bolster the subjective reasonableness of defendant's self-defense argument. Id. at 267, 982 P.2d at 896. This court concluded that, "[w]hile some information about [defendant's] upbringing may have been relevant to his subjective reaction to violence, a laundry list of prior violent acts, arrests, and prior convictions was plainly unwarranted and unjustifiable." Id. at 268, 982 P.2d at 897 (emphasis added). We noted that,

> [b]ecause trial counsel's action may warrant disciplinary action, we refer this case to the Office of Disciplinary Counsel. *Accord Bettencourt v. Bettencourt*, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995) (Where attorney's actions "[did] not comport with the precepts embodied in the [Hawai'i Rules of Professional Conduct (HRPC)], we are compelled to refer the supreme court record in this case, as we must pursuant to the Revised Code of Judicial Conduct Canon 3(D)(2) (1992), to the Office of Disciplinary Counsel for its review and appropriate action.") (Footnote omitted.)). *See also* HRPC Rule 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.").

Id. at 268 n.6, 982 P.2d at 897 n.6. See also Lester v. Rapp, 85 Hawai'i 238, 242, 942 P.2d 502, 506 (1997) (quoting excerpts from court hearing and concluding that "record clearly demonstrates that [defendant-attorney] misrepresented the facts to the court," as well as citing Hawai'i Code of Professional Responsibility, Disciplinary Rules 1-102(A)(4); 7-102(A)(3), (5) and (7) (emphasis added)).

In Lee v. Aiu, 85 Hawai'i 19, 936 P.2d 655 (1997), this court, in affirming the defendant-attorney's liability to plaintiff on the tortious interference with contractual relations claim, stated, "it appears from the record in this case that [defendant-attorney] engaged in conduct that may not comport with the HRPC." Id. at 35, 936 P.2d at 671. In referring the matter to the ODC, we specifically cited HRPC Rule 1.2(a) (stating that a lawyer shall abide by client's decision whether to accept a settlement offer), HRPC Rules 1.8(a) and (j) (dealing with conflicts of interest such as entering into a business transaction with a client or acquiring a proprietary interest in

a matter the lawyer is handling for the client), and HRPC 8.4 (regarding dishonesty, fraud, deceit or misrepresentation).

The majority maintains that the approach it has taken in this case

> is no different than that taken in Lee v. Aiu, 85 Hawai'i 19, 35, 936 P.2d 655, 671 (1997). In Lee, we referred the record to ODC for its review without an explanation of specific misconduct, other than noting that counsel may have engaged in conduct that did not comport with the HRPC.

Majority op. at 18. The majority, however, overlooks the fact that this court, in Lee, provided a detailed description of the actions of the defendant-attorney in tortiously interfering with the contractual relations between the plaintiff and the co-defendant in that case, including the fact that, in opining that the defendant-attorney "engaged in conduct that may not comport with the HRPC," id., this court cited to three possible HRPC violations, specifically citing HRPC Rules 1.2 (scope of representation), 1.8 (conflict of interest, prohibited transactions), and 8.4 (misconduct).[7] Thus, the lack-of-

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[7] In attempting to distinguish Lee, the majority states:

> it is obvious that our description of the specific actions of the defendant-attorney[] was in the context of analyzing the tortious interference with contractual relations claim. Notably, in the section of the opinion entitled "Referral to the ODC," we did not summarize those actions nor refer to them with any degree of specificity. See Lee, 85 Hawai'i at 35, 936 P.2d at 671. Rather, we merely stated that "it appears from the record in this case that [the defendant-attorney] engaged in conduct that may not comport with the HRPC." Id. (brackets added).

Majority opinion at 19. The explanation in this concurring opinion is, likewise, provided in the context of analyzing the merits of the request for attorneys' fees and in articulating the basis for the significant reduction and ultimate award of fees. See Price, 107 Hawai'i at 113, 111 P.3d at 8. Moreover, inasmuch as "the specific actions of defendant-attorney" had already been discussed in previous sections in the Lee opinion, it is patently obvious

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explanation-approach taken in this case by the majority is contrary to, not consistent with, the approach taken in Lee.

In cases where the possible HRPC violations did not occur at the trial level, but on appeal, we have similarly provided the ODC with the requisite explanation to allow it to conduct a meaningful investigation. For example, in AIG Hawai'i Ins. Co. v. Bateman, 82 Hawai'i 453, 923 P.2d 395, as amended, (1996), -- the third in a series of appeals -- defense counsel were referred to ODC for continuing to prosecute the first appeal that had been rendered moot because the parties had settled ten days after filing the notice of appeal. Unaware that the case had settled, the court issued its decision, including a lengthy dissenting opinion, in the first appeal. The existence of the settlement was discovered a year later, when the defense appealed their unsuccessful motion to rescind the settlement agreement. Because the referral to the ODC was not based upon events that occurred at the trial level that would be demonstrated in transcripts, exhibits, pleadings, and the like, we met our responsibility to provide sufficient information, as required by Akinaka, by providing a detailed background and discussion of the

[7](...continued)
that regurgitating a description of those actions in the referral section of the opinion would have been redundant and that a "summar[y of] them with any degree of specificity" was equally unnecessary.

case, including citations to the HRPC Rules 3.1 (meritorious claims and contentions) and 3.3 (candor toward the tribunal). See also Bettencourt, 80 Hawai'i at 229, 909 P.2d at 557 (providing examples of counsel's "running sarcastic commentary, carried on in footnotes throughout the opening brief," explaining that "[t]his kind of incivility is demeaning to the legal profession and should not be tolerated," (emphasis added) and citing HRPC preamble and Rule 1.1).

Thus, consistent with the past practices of this court, the explanation in sections I.A. and I.B. of this concurrence similarly provides the grounds upon which this court based its substantial reduction of the requested fees, which, in turn, provides some insight as to the reasoning that prompted this court to refer this matter to the ODC for investigation.

D. Possible Violations of the HRPC

In light of the fact that the instant request seeks an excessive amount of fees and because "DFS paid these charges in full[,]" I agree with the majority's referral of this case to ODC for an investigation as to whether the Hawai'i Rules of Professional Conduct were violated. See Bateman, 82 Hawai'i at 460, 923 P.2d at 402, as amended, (1996) ("[W]e are compelled to refer the record of this case to the ODC for its review and appropriate action."); Bettencourt, 80 Hawai'i at 227, 909 P.2d at 555 ("[W]e are referring the supreme court record of this case to the [ODC] to determine whether the lack of professionalism

demonstrated by appellant's counsel in this case violates the [HRPC]."). "Once ODC receives an ethics complaint, it conducts an investigation to see whether there is evidence that an attorney licensed to practice law in this State . . . has violated, by act or omission, any provision of the [HRPC]." Akinaka, 91 Hawai'i at 56, 979 P.2d at 1082 (citations and footnote omitted).

In the instant case, the Stubenberg firm charged DFS an unreasonable amount of fees, and Stubenberg -- as the majority points out -- represented to this court in his declaration that such fees were "reasonably incurred." The majority, however, neglects to mention that, in submitting the fee request on behalf of the Stubenberg firm, the Alston Hunt Floyd & Ing law firm, which had assumed representation of DFS after Paiea filed its reply brief, also represented to this court that the attorneys' fees "were reasonably and necessarily incurred."[8] However, as explained in sections I.A. and I.B., a substantial portion of the fees requested were clearly unreasonable and unnecessary. I, therefore, find it perplexing that the Alston firm -- assuming it reviewed the file and the Stubenberg firm's billings in preparation of filing DFS' request for attorneys' fees -- believed it appropriate to represent to this court that the fees

[8] I note that, although the request for fees is signed by Peter Knapman, the name "PAUL ALSTON" is typed below the signature. Knapman's name is not typed or printed anywhere in the request. As such, the request clearly violates HRAP Rule 32(c) (2004) ("The name of the signator shall be typed or printed under the signature.").

being requested were reasonable and necessary. Even a cursory review would have indicated that the prudent approach was to avoid any misrepresentation to this court that the fees charged were reasonable by acknowledging that some fees might be unreasonable and leaving the task of arriving at a reasonable fee to the court. Alternatively, inasmuch as none of the requested fees were incurred by the Alston firm, it could have avoided making any representation as to reasonableness and necessity by simply referring the court to Stubenberg's declaration and leaving the issue of reasonableness and necessity to this court to decide.

Accordingly, based on the foregoing discussion, I agree with the majority's referral of this case to ODC inasmuch as it appears that the actions of counsel in this case may not comport with the precepts embodied in the HRPC. See HRPC Rules 1.1,[9]

[9] HRPC Rule 1.1 states:

> **Rule 1.1 COMPETENCE.**
> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

1.5,[10] 3.1,[11] 3.3,[12] 8.3,[13] and

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[10] HRPC Rule 1.5 provides:

> **RULE 1.5 FEES.**
> **(a).** A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
> (8) whether the fee is fixed or contingent, and in contingency fee cases the risk of no recovery and the conscionability of the fee in light of the net recovery to the client;
> (9) the relative sophistication of the lawyer and the client; and
> (10) the informed consent of the client to the fee agreement.
> . . . .

[11] HRPC Rule 3.1 provides in pertinent part that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous[.]"

[12] HRPC Rule 3.3 states in pertinent part that "[a] lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal[.]"

[13] HRPC Rule 8.3 provides:

> **Rule 8.3 REPORTING PROFESSIONAL MISCONDUCT**
> **(a)** A lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
> . . . .
> **COMMENT:**
> [1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. . . . An apparently isolated violation may indicate a pattern of misconduct that only a

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8.4[14] (1994).

II. CONCLUSION

In light of the foregoing discussion, I agree with the majority's award of $23,515.70 in reasonable attorneys' fees to DFS and with the referral of the records in appeal No. 25662 and Civil No. 02-1-2012 to ODC for its review and appropriate action.

[13](...continued)

> disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.
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> . . . .
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> [3] . . . This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

(Italicized emphasis omitted).

[14] HRPC Rule 8.4 provides in pertinent part: "It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"