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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

CEDRIC LEE, Petitioner,

vs.

OFFICE OF DISCIPLINARY COUNSEL, Respondent.

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
(By: Moon, C.J. for the court[1])

By letter dated August 8, 2008 and received by our Clerk on August 12, 2008, Cedric Lee attempts to appeal from the Office of Disciplinary Counsel's determination there was "no basis to investigate" an attorney. The information provided by Lee indicates Lee complained about an attorney representing an opposing party in a divorce action. Under Rule 2 of the Rules of the Supreme Court of the State of Hawai'i (RSCH), "complaining witnesses are not parties to disciplinary cases[,] and they have no standing . . . to seek review of ODC or Disciplinary Board decisions. . . . Thus, if any review is to be had, review must be had by way of [a] petition for writ of mandamus." *In re Disciplinary Board*, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999). Consequently, pursuant to Rule 21 of the Hawai'i Rules

[1] Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

of Appellate Procedure (HRAP), we consider Lee's letter as a petition for writ of mandamus.

> A writ of mandamus and/or prohibition will not issue unless a petitioner demonstrates a clear and indisputable right to relief and a lack of other means to redress adequately the alleged wrong or obtain the requested action . . . . Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available[.]

In re Disciplinary Board, 91 Hawai'i at 368, 984 P.2d at 693 (citations omitted).

We have previously noted that:

> Duties imposed by [RSCH] Rule 2 upon [the] ODC and the Disciplinary Board are duties owed to this court. In furtherance of
>
> those duties and in recognition of the limited resources available and the difficulties inherent in prosecuting any accusation of unethical behavior, our rules grant to [the] ODC and the reviewing Disciplinary Board members the discretion to determine whether pursuit of particular disciplinary allegations is warranted.

Id. at 368-69, 984 P.2d at 693-94.

Petitioner Lee asserts Disciplinary Counsel's decision implies that this court has found certain alleged misbehavior acceptable. No such implication can be drawn from Disciplinary Counsel's determination "that there is no basis to investigate" the attorney. Likewise, Disciplinary Counsel's determination can have no bearing upon any police or prosecutorial decision with regard to purported criminal charges against the subject attorney or other actors identified by Petitioner Lee, for such decisions

to pursue criminal charges are within the discretion of the prosecutors.

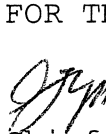
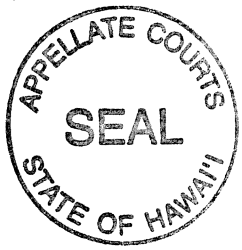
Petitioner Lee has failed to demonstrate a clear and indisputable right to relief. Therefore,

IT IS HEREBY ORDERED that the Clerk shall file Petitioner Lee's letter as a petition for writ of mandamus and, pursuant to Section 607-3 of the Hawai'i Revised Statutes, the filing fee for the petition is waived.

IT IS FURTHER ORDERED, pursuant to HRAP Rule 21(c), that the petition for writ of mandamus is denied.

DATED: Honolulu, Hawai'i, August 28, 2008.

FOR THE COURT:



Chief Justice