NO. 27086

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

JAMES M. PALLETT, Respondent.

(ODC 99-037-5867, ODC 99-202-6032, ODC 01-375-7119)

ORDER OF SUSPENSION

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of (1) Hearing Officer Ted A. Chihara's (Hearing Officer Chihara) July 9, 2004 findings of fact, conclusion of law, and recommendation to suspend Respondent James M. Pallett (Respondent Pallett) from the practice of law for three months, (2) the Disciplinary Board's January 28, 2005 report and recommendation to suspend Respondent Pallett from the practice of law for five years, (3) Respondent Pallett's April 19, 2005 opening brief, (4) Petitioner Office of Disciplinary Counsel's (Petitioner ODC) May 31, 2005 answering brief, (5) Respondent Pallett's June 27, 2005 notice that he would not file a reply brief, and (6) the record, we reject Hearing Officer Chihara's findings of fact, conclusions of law, and recommendation, and, instead, we adopt Disciplinary Board's findings of fact, conclusions of law, and recommendation, except to the limited extent that the Disciplinary Board concluded that Respondent Pallett practiced law while he was administratively suspended from the practice of law.

The ODC proved by clear and convincing evidence that, while Respondent Pallett was representing several clients in

various litigation matters, Respondent Pallett violated the Hawai'i Rules of Professional Conduct (HRPC). While Respondent Pallett was representing Eric Biel in a criminal case, Respondent Pallett failed to appear in court on a Mr. Biehl's behalf in violation of

- HRPC Rule 1.1 (requiring a lawyer to provide competent legal representation for a client);
- HRPC Rule 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client);
- HRPC Rule 3.2 (requiring a lawyer to make reasonable efforts to expedite litigation consistent with the legitimate interests of the client); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Respondent Pallett failed to maintain financial records regarding Mr. Biehl in violation of

- HRPC Rule 1.15(f)(3) (requiring a lawyer to maintain, for at least six years, complete computerized or manual record of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer);
- HRPC Rule 1.15(g) (requiring a lawyer to maintain copies of cash receipts, records of disbursements, a subsidiary ledger, and bank statements for at least six years after completion of the employment to which they relate); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Respondent Pallett failed to cooperate with Petitioner ODC's investigation of Mr. Biehl's ethics complaint against Respondent

Pallett in violation of

- HRPC Rule 8.1(b) (prohibiting a lawyer in connection with a disciplinary matter from knowingly failing to respond to a lawful demand for information from a disciplinary authority);
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another); and
- HRPC Rule 8.4(d) (providing that it is professional misconduct for a lawyer to fail to cooperate during the course of an ethics investigation or disciplinary proceeding).

While Respondent Pallett was representing Susan Kim and her husband, Kim Chung Sung, Respondent Pallett failed to respond to an opposing party's requests for production of documents, failed to respond to the opposing party's interrogatories, and failed to appear at court hearings on the opposing party's two motions to compel responses to the discovery requests in violation of

- HRPC Rule 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client);
- HRPC Rule 3.2 (requiring a lawyer to make reasonable efforts to expedite litigation consistent with the legitimate interests of the client);
- HRPC Rule 3.4(e) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Respondent Pallett misrepresented that he had served a copy of a withdrawal and substitution of counsel document on opposing counsel in violation of

- HRPC Rule 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal);
- HRPC Rule 3.4(e) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists);
- HRPC Rule 4.1(a) (prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person);
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another); and
- HRPC Rule 8.4(c) (providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent Pallett converted Ms. Kim's funds in violation of

- HRPC Rule 1.15(a)(1) (requiring a lawyer to maintain a client trust account into which the lawyer must deposit all funds that are entrusted to the lawyers care);
- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds belonging to a client, where such possession is incident to the lawyer's practice of law, is a fiduciary and the lawyer shall not commingle such funds or property with his or her own property or misappropriate such funds or property to the lawyer's own use and benefit);
- HRPC Rule 1.15(c) (requiring that a lawyer must deposit all funds belonging in part to a client and in part presently or potentially to the lawyer or law firm into a client trust account);
- HRPC Rule 1.15(d) (requiring a lawyer to deposit all funds into a client trust account that are entrusted to

the lawyer, except for non-refundable retainers that are earned upon receipt);[1] and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Respondent Pallett failed to maintain sufficient financial records relating to his representation of Ms. Kim in violation of

- HRPC Rule 1.15(f)(3) (requiring a lawyer to maintain, for at least six years, complete computerized or manual record of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer);

- HRPC Rule 1.15(g) (requiring a lawyer to maintain copies of cash receipts, records of disbursements, a subsidiary ledger, and bank statements for at least six years after completion of the employment to which they relate); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Respondent Pallett misrepresented to Ms. Kim's previous attorney that he had not filed the withdrawal and substitution of counsel document when, in fact, he had actually done so, in violation of

- HRPC Rule 4.1(a) (prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person);

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another); and

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[1] Effective January 1, 2002, we amended Rule 1.15(d) of the Hawai'i Rules of Professional Conduct (HRPC) by, among other things, deleting the reference to "non-refundable retainers" and providing that "all fee retainers are refundable until earned." HRPC Rule 1.15(d) (as amended on October 9, 2001, effective January 1, 2002).

- HRPC Rule 8.4(c) (providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent Pallett misrepresented to opposing counsel that Respondent Pallett did not represent Ms. Kim and her husband when, in fact, Respondent Pallett was their attorney of record, in violation of

- HRPC Rule 4.1(a) (prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person);
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another); and
- HRPC Rule 8.4(c) (providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent Pallett failed to cooperate with Petitioner ODC's investigation of Ms. Kim's ethics complaint against Respondent Pallett in violation of

- HRPC Rule 8.1(b) (prohibiting a lawyer in connection with a disciplinary matter from knowingly failing to respond to a lawful demand for information from a disciplinary authority);
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another); and
- HRPC Rule 8.4(d) (providing that it is professional misconduct for a lawyer to fail to cooperate during the course of an ethics investigation or disciplinary proceeding).

We reject the Disciplinary Board's conclusion that Respondent Pallett practiced law while he was administratively suspended from the practice of law. Petitioner ODC alleged that

Respondent Pallett practiced law after the Child Support Enforcement Agency of the State of Hawai'i (the CSEA) had informed Respondent Pallett that he was administratively suspended from the practice of law based on Respondent Pallett's failure to comply with a child support obligation. However, the CSEA was not authorized to administratively suspend Respondent Pallett from the practice of law.

The Hawai'i legislature enacted HRS § 576D-13 (Supp. 1999) to authorize the CSEA to direct administrative agencies to suspend licenses when the license-holders failed to meet their mandatory child support obligations. Pursuant to the supreme court's exclusive power to promulgate rules and regulations relating to the practice of law, the supreme court promulgated Rule 17.1 of the Rules of the Supreme Court of the State of Hawai'i (RSCH). RSCH Rule 17.1 authorizes the Hawai'i State Bar, only, to suspend a lawyer from the practice of law if the CSEA certifies that the lawyer is not in compliance with a child support order:

> Rule 17.1 Child Support Enforcement
>
> (a) Suspension of License to Practice Law. Upon receipt of a certification from the Child Support Enforcement Agency of the State of Hawai'i (CSEA) that a person licensed to practice law in this jurisdiction is not in compliance with an order of support or is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the Hawai'i State Bar shall immediately suspend the license of the person so certified.
>
> (b) Reinstatement to Practice. A license suspended under subsection (a) of this rule shall not be reinstated until the CSEA or the Family Court issues, in writing, an authorization canceling the certification of noncompliance. Upon receipt of the authorization canceling the certification and payment of all fees and costs

assessed, including arrears, by the Hawai'i State Bar, the Hawai'i State Bar shall reinstate the license of the attorney.

(c) Fee Assessment. The Hawai'i State Bar may assess a reasonable fee for reinstating or restoring a license and may also charge the attorney a reasonable fee to cover the administrative costs incurred by the Hawai'i State Bar to comply with this rule.

RSCH Rule 17.1 (effective January 1, 1998) (emphasis added).

The record shows that the CSEA sent a notice to the Hawai'i State Bar and to Respondent Pallett that

- stated Respondent Pallett had failed to comply with his child support obligation, and
- directed the Hawai'i State Bar to immediately suspend Respondent Pallett's license to practice law pursuant to HRS § 576D-13 (Supp. 1999).

However, absent clear and convincing evidence that the Hawai'i State Bar administratively suspended Respondent Pallett from the practice of law, the Disciplinary Board erred by concluding that Respondent Pallett practiced law while he was administratively suspended in violation of

- HRPC Rule 1.4(a) (requiring a lawyer to keep a client reasonably informed about the status of a legal matter and promptly comply with reasonable requests for information);
- HRPC Rule 1.16(a)(1) (providing that a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if the representation will result in a violation of the HRPC or other law);
- HRPC Rule 1.16(d) (requiring a lawyer, upon termination of a representation, to take steps to the extent reasonably practicable to protect the client's interests);
- HRPC Rule 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction where doing so violates the

law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the HRPC, knowingly assist or induce another to do so, or to do so through the act of another).

Nevertheless, in light of Respondent Pallett's other numerous ethical violations,

IT IS HEREBY ORDERED that Respondent James M. Pallett (attorney number 3786) is suspended from the practice of law in this jurisdiction for a period of five (5) years, effective thirty (30) days after entry of this order, as provided by RSCH Rule 2.16(c).

IT IS FURTHER ORDERED that Respondent James M. Pallett (attorney number 3786) shall successfully complete, at his own expense, and pass the Multistate Professional Responsibility Examination before he seeks reinstatement to the practice of law in Hawai'i.

DATED: Honolulu, Hawai'i, September 2, 2005.

Alvin T. Ito, special assistant disciplinary counsel, for petitioner

William A. Harrison (Harrison & Matsuoka), for respondent