

**Electronically Filed
Supreme Court
SCAD-12-0001028
19-MAR-2013
01:57 PM**

SCAD-12-0001028

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

DERWIN HAYASHI, Respondent.

ORIGINAL PROCEEDING
(ODC 09-075-8798)

ORDER

(By: Recktenwald, C.J., Nakayama, Acoba, and Pollack, JJ.
and Intermediate Court of Appeals Chief Judge Nakamura,
in place of McKenna, J, recused)

Upon consideration of the Report and Recommendation of the Disciplinary Board of the Supreme Court of the State of Hawai'i for the imposition of a two-week suspension and other sanctions against Respondent Derwin Hayashi, the stipulated facts, and the evidence in the record, this court concludes by clear and convincing evidence that Hayashi deposited \$3,000.00 in client funds directly into his personal bank account, rather than a client trust account, failed within a reasonable time following the initiation of the representation to communicate to the client a basis or rate of his fee, and failed to timely provide an

accurate accounting to the client when requested to do so. We further conclude Hayashi failed to maintain a client trust account or the required financial records pertaining to the receipt, safeguarding, and disbursement of client funds, and filed false statements concerning his receipt of client funds on his annual bar registration statements for 2009 and 2010. Hayashi's conduct violated Rules 1.5(b), 1.15(a), 1.15(c), 1.15(d), 1.15(f)(3), 1.15(g), and 8.4(c) of the Hawai'i Rules of Professional Conduct. We also recognize in aggravation Hayashi's substantial experience in the practice of law and, in mitigation, his unblemished disciplinary record over his thirty years of practice, evidence of his good character, principles, and work ethic, the absence of a dishonest or selfish motive, his cooperation with disciplinary authorities, and the subsequent opening of a client trust account since the initiation of the disciplinary proceedings against him. Therefore,

IT IS HEREBY ORDERED that the discipline recommended in the Stipulated Agreement reached by the parties is hereby imposed; to wit, Respondent Derwin Hayashi is suspended from the practice of law in this jurisdiction for two weeks, effective 30 days from the date of entry of this order, as provided by Rules 2.3(a)(2) and 2.16(c) of the Rules of the Supreme Court of the State of Hawai'i (RSCH), is ordered to complete nine hours of continuing legal education within 375 days from the date of the

entry of this order, in addition to any continuing legal education requirements imposed upon members of the bar as a whole, and the completion of the mentoring agreement memorialized in the Stipulated Agreement and in the exhibits appended thereto.

IT IS FURTHER ORDERED that Respondent Hayashi shall submit to this court an affidavit of completion of the additional continuing legal education classes within 375 days after the entry date of this order, with appropriate supporting documentation appended thereto.

IT IS FURTHER ORDERED that ODC shall monitor the mentoring program and submit to this court, within 375 days after the entry date of this order, a declaration reporting the successful completion of the program by Hayashi or a declaration of any failure attributable to Respondent Hayashi to complete said mentoring program, along with any appropriate reports or documentation in support thereof.

IT IS FURTHER ORDERED that Respondent Hayashi shall submit an affidavit demonstrating compliance with RSCH Rule 2.16(d) within 10 days after the effective date of his suspension.

IT IS FURTHER ORDERED that Respondent Hayashi shall pay all costs of the proceedings, as approved upon a timely submission of a bill of costs, as authorized by RSCH Rule 2.3(c).

IT IS FURTHER ORDERED that the Disciplinary Board shall remind Respondent Hayashi that he may not resume the practice of law until reinstated by order of this court, pursuant to RSCH Rule 2.17.

DATED: Honolulu, Hawai'i, March 19, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Richard W. Pollack

/s/ Craig H. Nakamura

