

NO. 24539

IN THE SUPREME COURT OF THE STATE OF HAWAII

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

JEROME K. MULLER, Respondent.

(ODC 99-278-6108)

AMENDED ORDER OF SUSPENSION¹

(By: Moon, C.J.; Levinson, Ramil, and Acoba, JJ., and
First Circuit Judge Perkins, in place of Nakayama, J., recused)

We have considered the Disciplinary Board's Report and Recommendation to suspend Respondent Jerome K. Muller from the practice of law for a period of six (6) months, Petitioner's arguments for a suspension of one (1) year and one (1) day, and Respondent's arguments concerning due process. The Disciplinary Board's findings of fact and conclusions of law are supported by the record. We find no merit in Respondent's due process arguments. We impose a six (6) month suspension.

In sum, Respondent Muller filed a false declaration in support of a motion to accept a late brief in an appeal before the Board of Immigration Appeals in the United States Department of Justice. Respondent's failure to timely file the brief and his misrepresentations in support of his motion to accept the late brief violated Rules 1.3, 3.2, 3.3(a)(1), 8.4(a), and 8.4(c) of the Hawai'i Rules of Professional Conduct. In support of its recommendation for a six (6) month suspension, the Disciplinary

¹ The order filed January 9, 2002, wrongly listed Associate Justice Paula Nakayama as having considered the Report and Recommendation. Justice Nakayama recused, and substitute Justice Perkins considered the report.

Board found, as mitigating factors, that Respondent Muller suffered a devastating shock due to the death of friend, that Respondent Muller admitted facts and stipulated to evidence, that Respondent Muller has a good character and reputation, that Respondent Muller was discharged from his position as a result of his misrepresentations, and that Respondent Muller expressed genuine remorse. In consideration of the appropriate sanction, we have carefully considered the mitigating factors found by the hearing committee and the Disciplinary Board. We view an attorney's misrepresentations to a tribunal as a matter of extreme gravity. But for the mitigating factors our grave concerns regarding an attorney's misrepresentations to a tribunal would have resulted in a significantly greater sanction. In light of the above,

IT IS HEREBY ORDERED that Respondent Jerome K. Muller is suspended from the practice of law in this jurisdiction for a period of six (6) months, effective February 8, 2002². Reinstatement shall be conditioned upon payment of restitution and/or costs as subsequently ordered by this court.

DATED: Honolulu, Hawai'i, January 14, 2002.

² Thirty days from the date of the original order entered January 9, 2002.