

NO. 24777

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

LOWELL D. CHATBURN, Respondent.

(ODC 94-099-4190, 95-149-4608, 96-178-4978)

ORDER OF DISBARMENT

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

We have considered the "Disciplinary Board's Report and Recommendation for the Disbarment of Lowell D. Chatburn from the Practice of Law." The Disciplinary Board's findings of fact and conclusions of law are supported by the record. We adopt the Disciplinary Board's recommendation to disbar Respondent Lowell D. Chatburn and order him to pay restitution to Dorvin D. Leis in the amount of \$128,592.59.

Respondent Chatburn's misconduct prior to January 1, 1994, violated the Disciplinary Rules (DR) of the Hawai'i Code of Professional Responsibility (HCPR) as follows:

- two violations of HCPR DR 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation);
- two violations of HCPR DR 1-102(A)(6) (prohibiting conduct adversely reflecting on fitness to practice law);
- one violation of HCPR DR 7-101(A)(2) (failure to carry out a contract of employment entered into with a client for professional services);
- two violations of HCPR DR 9-102(A) (prohibiting commingling and misappropriating client funds);

- two violations of HCPR DR 9-102(B)(1) (requiring lawyers to promptly notify a client of the receipt of client funds);
- two violations of HCPR DR 9-102(B)(3) (failure to maintain complete records of funds of a client coming into lawyer's possession and to render appropriate account to the client regarding those funds);
- two violations of HCPR DR 9-102(B)(4) (requiring lawyers to promptly pay to a client, as requested by the client, the funds in possession of the lawyer which the client is entitled to receive); and
- one violation of HCPR DR 9-102 Addendum A (requiring lawyers to maintain a cash receipts journal, a disbursements journal, a subsidiary ledger, bank statements, and a record showing all property held in trust).

Chatburn's misconduct on or after January 1, 1994, violated multiple provisions of the Hawai'i Rules of Professional Conduct (HRPC) as follows:

- one violation of HRPC 1.5(c) (requiring a lawyer to provide a final statement after the conclusion of a contingent fee matter);
- one violation of HRPC 1.8 (prohibiting improper business transactions with clients);
- two violations of HRPC 1.15(a) (requiring lawyers to maintain separate client trust accounts and business accounts);
- two violations of HRPC 1.15(b) (requiring prompt notification and delivery to client of receipt of funds);
- three violations of HRPC 1.15(c) (prohibiting commingling and misappropriation of client funds);
- two violations of HRPC 1.15(f)(1) (requiring prompt notification to clients of receipt of funds);
- one violation of HRPC 1.15(f)(3) (requiring lawyers to maintain complete records of client funds);
- two violations of HRPC 1.15(f)(4) (requiring prompt delivery of client funds);

- one violation of HRPC 1.15(g)(2) (requiring lawyers to maintain records relating to client funds);
- two violations of HRPC 5.3 (requiring lawyers to supervise their non-lawyer assistants);
- one violation of HRPC 8.4(a) (prohibiting any violation of the HRPC through the actions of another); and
- three violations of HRPC 8.4(c) (prohibiting dishonesty, fraud, deceit, or misrepresentation).

Of these thirty-five rules violations, the most serious violations involved Respondent Chatburn's commingling and conversion of clients' funds for his own use in violation of HCPR DR 9-102(A) and HRPC 1.15(c). See Office of Disciplinary Counsel v. Lau, 85 Hawai'i 212, 216, 941 P.2d 295, 299 (1997) ("[W]here misconduct is severe and extensive and includes misappropriation of clients' funds, it would be difficult, if not impossible, to establish sufficiently strong evidence of mitigation to warrant a penalty lesser than disbarment." (Citation omitted)).

Therefore,

IT IS HEREBY ORDERED that Respondent Lowell D. Chatburn is disbarred from the practice of law in Hawai'i, effective thirty (30) days after entry of this order, as provided by Rule 2.16(c) of the Rules of the Supreme Court of Hawai'i (RSCH).

IT IS FURTHER HEREBY ORDERED that, in addition to the requirements for reinstatement set out in RSCH Rule 2.17, Respondent Lowell D. Chatburn shall make restitution to Dorvin D. Leis in the amount of \$128,592.59.

DATED: Honolulu, Hawai'i, May 30, 2002.