

NO. 26113

IN THE SUPREME COURT OF THE STATE OF HAWAII

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

LUNSFORD DOLE PHILLIPS, Respondent.

(ODC 01-142-6886)

ORDER OF SUSPENSION FOR ONE YEAR AND ONE DAY

(By: Moon, C.J., Levinson, Nakayama, Acoba, JJ., and
Circuit Judge Cardoza, in place of Duffy, J., recused)

Upon consideration of (1) Respondent Lunsford Dole Phillips (Respondent Phillips) and Petitioner Office of Disciplinary Counsel's (Petitioner ODC) February 3, 2003 stipulation of facts, conclusions of law, and recommendation that Respondent Phillips receive a suspension from the practice of law for a period of one year and one day, (2) the Disciplinary Board's report and recommendation for the suspension of Respondent Phillips from the practice of law for a period of one year, (3) Respondent Phillips's December 16, 2003 opening brief and February 6, 2004 reply brief, (4) Petitioner ODC's January 26, 2004 answering brief, and (5) the record, we conclude that the record supports the Disciplinary Board's acceptance of Respondent Phillips and Petitioner ODC's stipulation of facts and conclusions of law, but we reject the Disciplinary Board's recommendation that Respondent Phillips receive a suspension from the practice of law for a period of one year, and, instead, we adopt Respondent Phillips and Petitioner ODC's February 3, 2003 stipulated recommendation that Respondent Phillips receive a suspension from the practice of law for a period of one year and

one day. While Respondent Phillips represented plaintiffs in Griffin, Graham, and McConnell v. Aloha Stadium Authority and State of Hawai'i, Civil No. 97-00315 SPK, in the United State District Court for the District of Hawai'i, Respondent Phillips mishandled settlement funds that he owed to a third person. Respondent Phillips's mishandling of the settlement funds violated the following Hawai'i Rules of Professional Conduct (HRPC):

- HRPC Rule 1.15(a)(1) (requiring that a lawyer shall maintain a trust account, separate from any business and personal accounts, into which all funds entrusted to the lawyer's care shall be deposited);
- HRPC Rule 1.15(b) (requiring that a lawyer's business account shall be prominently labeled "business account," "office account," or appropriate business-type account);
- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds or other property belonging to a third person, where such possession is incident to the lawyer's practice of law, is a fiduciary and shall not commingle such funds with his or her own);
- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds or other property belonging to a third person, where such possession is incident to the lawyer's practice of law, is a fiduciary and shall not misappropriate such funds to his or her own use and

benefit);

- HRPC Rule 1.15(d) (then providing that all funds entrusted to a lawyer, except for "non-refundable retainers" earned upon receipt, shall be deposited intact into a trust account);¹
- HRPC Rule 1.15(f) (1) (requiring that a lawyer shall promptly notify a third person of the lawyer's receipt of funds in which the third person has an interest);
- HRPC Rule 1.15(f) (4) (requiring that a lawyer shall promptly pay or deliver to a third person, as requested by the third person, the funds in the possession of the lawyer that the third person is entitled to receive); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the HRPC).

Therefore,

IT IS HEREBY ORDERED that Respondent Lunsford Dole Phillips (attorney number 4407) is suspended from the practice of law in this jurisdiction for a period of one (1) year and one (1) day, effective thirty (30) days after entry of this

¹Effective 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).

order, as provided by Rule 2.16(c) of the Rules of the Supreme Court of Hawai'i (RSCH). Respondent Phillips shall comply with all requirements of RSCH Rule 2.16, and he shall not resume the practice law in the State of Hawai'i unless he successfully petitions for reinstatement pursuant to RSCH Rule 2.17(c).

DATED: Honolulu, Hawai'i, April 15, 2004.