

NO. 26773

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner

vs.

JAMES T. COUNTISS, Respondent.

(ODC 02-203-7401)

ORDER OF SUSPENSION

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

Upon consideration of (1) the Disciplinary Board's August 27, 2004 report and recommendation for the suspension of Respondent James T. Countiss (Respondent Countiss) from the practice of law for a period of one month, (2) Respondent Countiss's lack of objection, as exhibited by his lack of a request to file a brief pursuant to Rule 2.7(d) of the Rules of the Supreme Court of the State of Hawai'i (RSCH), and (3) the record, including the "Second Stipulation of Facts, Conclusions of Law, and Propose Discipline" ("the Second Stipulation") that Petitioner ODC and Respondent Countiss filed with the Disciplinary Board on July 21, 2004 in ODC 02-203-7401, we conclude that Petitioner Office of Disciplinary Counsel (Petitioner ODC) has proved by clear and convincing evidence that Respondent Countiss has been convicted of three offenses involving intoxication, and, thus, Respondent Countiss violated the following Hawai'i Rules of Professional Conduct (HRPC):

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt to violate the Hawai'i Rules of

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Professional Conduct), and

- HRPC Rule 8.4(b) (providing that it is professional misconduct for a lawyer to commit a criminal act that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

IT IS HEREBY ORDERED:

1. Respondent James T. Countiss (attorney number 1440) is suspended from the practice of law in Hawai'i for one month, effective thirty (30) days after entry of this order, as provided by RSCH Rule 2.16(c).

2. If Respondent Countiss has not yet done so, within seven days after Respondent Countiss arrives in Hawai'i, Respondent Countiss shall enter into a stipulated monitoring program ("Program") pursuant to RSCH Rule 2.3(b) that the Director of the Attorneys and Judges Assistance Program (AJAP) shall supervise, and the AJAP shall monitor Respondent Countiss's compliance with the following conditions:

- a. Respondent Countiss shall attend ninety (90) separate meetings of either Alcoholics Anonymous ("AA") or Narcotics Anonymous ("NA") within the first ninety (90) calendar days of his initiation of the monitoring Program. Respondent Countiss shall document attendance at the ninety (90) meetings to the AJAP Director on weekly basis.
- b. After completion of the ninety (90) days, Respondent Countiss shall attend

three (3) other AA or NA meetings each week. Respondent Countiss shall document attendance at the AA or NA meetings to the AJAP Director on a weekly basis.

- c. Respondent Countiss shall not partake in the use of any psychoactive substances, including alcoholic beverages, on any occasion, unless prescribed by a licensed medical physician. Respondent Countiss shall report any use of a psychoactive substance, including alcoholic beverages, whether properly prescribed or not, to the AJAP Director within seventy-two (72) hours of such use.
- d. Respondent Countiss shall submit to random drug and alcohol tests at the discretion and control of the AJAP Director or the AJAP Director's designee. Respondent Countiss shall be responsible for any and all costs associated with any drug and alcohol testing.
- e. The AJAP Director may appoint a monitor to assess Respondent Countiss under this monitoring Program. A person under this provision shall be an attorney monitor.

- f. The conditions of the monitoring Program shall be in effect for one calendar year from the initiation of the Program.
- g. If Respondent Countiss violates the provisions of this order or the monitoring Program without just cause, as determined by the AJAP Director, then the AJAP Director shall notify the Office of Disciplinary Counsel of such a violation, and the AJAP Director may terminate the monitoring Program and may refuse all similar requests in the future.
- h. In the event that disclosures under the monitoring Program may be considered confidential medical information, Respondent Countiss shall provide the appropriate release forms to the appropriate medical providers or insurance providers to allow the AJAP Director, the AJAP Director's designee, or the Office of Disciplinary Counsel to disclose, request, or obtain any medical information.

3. Respondent Countiss shall complete the terms of the monitoring Program.

4. Respondent Countiss and the AJAP Director shall report any violations by Respondent Countiss of the terms of the Program to Petitioner ODC.

