NO. 26781

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

OFFICE OF DISCIPLINARY COUNSEL, Petitioner

vs.

ROY M. YOSHINO, Respondent

FILED
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E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

(ODC 97-230-5424, ODC 98-079-5570,
ODC 99-099-5929, ODC 00-387-6733)

ORDER OF SUSPENSION

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

Upon consideration of (1) the Disciplinary Board's April 15, 2005 report and recommendation for the suspension of Respondent Roy M. Yoshino (Respondent Yoshino) from the practice of law for a period of one year, (2) Petitioner Office of Disciplinary Counsel's (Petitioner ODC) June 2, 2005 opening brief, (3) Respondent Yoshino's August 12, 2005 answering brief, (4) Petitioner ODC's September 21, 2005 reply brief, and (5) the record, we conclude that, in four disciplinary matters, Petitioner ODC proved by clear and convincing evidence that Respondent Yoshino violated several of the Hawaiʻi Rules of Professional Conduct (HRPC) while Yoshino was representing various clients. However, we reject the Disciplinary Board's recommendation that Respondent Yoshino receive a suspension for one year, and, instead, we suspend Respondent Yoshino from the practice of law for a period of one year and one day.

In ODC 97-230-5424, Respondent Yoshino settled a client's bodily injury claim and underinsured motorist claim when Yoshino did not have the client's authority to do so, and, thus, Respondent Yoshino violated

- HRPC Rule 1.2(a) (requiring a lawyer to abide by a client's decision whether to accept an offer of settlement of a matter); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino used a client's revoked power of attorney to settle the client's bodily injury claim and underinsured motorist claim in violation of

- HRPC Rule 1.2(a) (requiring a lawyer to abide by a client's decisions concerning the objectives of representation);
- HRPC Rule 4.1(a) (prohibiting a lawyer from knowingly making a false statement of material fact or law to a third person in the lawyer's course of representing a client);
- HRPC Rule 8.4(c) (providing that it is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino failed to comply with the client's request that Respondent Yoshino send a copy of the revoked power of attorney to the client, and, thus, Respondent Yoshino violated

- HRPC Rule 1.4(a) (requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino deposited the client's settlement checks into his general business account, and, thus, Respondent Yoshino commingled the client's funds with Respondent Yoshino's personal funds in violation of

- HRPC Rule 1.15(a)(1) (requiring that a lawyer who receives or handles client funds must maintain a client trust account, separate from any business and personal accounts, into which all funds entrusted to the lawyer's care must be deposited);

- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds belonging to a client, 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 or misappropriate such funds to his or her own use and benefit);

- HRPC Rule 1.15(c) (requiring that funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited into the client trust account);

- HRPC Rule 1.15(d) (requiring that all funds entrusted to a lawyer must be deposited intact into a client trust account); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

In ODC 98-079-5570, Respondent Yoshino failed to provide written fee agreements for seventeen clients whom Respondent Yoshino represented on a contingent basis, and, thus, Respondent Yoshino violated

- HRPC Rule 1.5(c) (requiring that contingent fee agreements shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino failed to provide written settlement statements for at least three of the settling clients in violation of

- HRPC Rule 1.5(c) (requiring that, upon the conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino deposited the settlement checks for six of his settling clients into Respondent Yoshino's general business account, and, thus, Respondent Yoshino commingled the clients'

funds with Respondent Yoshino's personal funds in violation of

- HRPC Rule 1.15(a)(1) (requiring that a lawyer who receives or handles client funds must maintain a client trust account, separate from any business and personal accounts, into which all funds entrusted to the lawyer's care must be deposited);

- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds belonging to a client, 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 or misappropriate such funds to his or her own use and benefit);

- HRPC Rule 1.15(c) (requiring that funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited into the client trust account);

- HRPC Rule 1.15(d) (requiring that all funds entrusted to a lawyer must be deposited intact into a client trust account); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

In ODC 99-099-5929, Respondent Yoshino failed to notify two clients of Respondent Yoshino's withdrawal as their attorney, and Respondent Yoshino failed to send the clients their records in violation of

- HRPC Rule 1.4(a) (requiring that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonably requests for information);

- HRPC Rule 1.16(d) (requiring that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers

and property to which the client is entitled and refunding any advance payment of fee that has not been earned); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

In ODC 00-387-6733, Respondent Yoshino deposited the settlement funds for seven settling clients into Respondent Yoshino's general business account, and, thus, Respondent Yoshino commingled the clients' funds with Respondent Yoshino's personal funds in violation of

- HRPC Rule 1.15(a)(1) (requiring that a lawyer who receives or handles client funds must maintain a client trust account, separate from any business and personal accounts, into which all funds entrusted to the lawyer's care must be deposited);

- HRPC Rule 1.15(c) (providing that a lawyer in possession of any funds belonging to a client, 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 or misappropriate such funds to his or her own use and benefit);

- HRPC Rule 1.15(c) (requiring that funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited into the client trust account);

- HRPC Rule 1.15(d) (requiring that all funds entrusted to a lawyer must be deposited intact into a client trust account); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino failed to provide written agreements for five clients whom Respondent Yoshino represented on a contingent fee basis, and, thus, Respondent Yoshino violated

- HRPC Rule 1.5(c) (requiring that contingent fee agreements shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino failed to provide written settlement statements for four of his settling clients in violation of

- HRPC Rule 1.5(c) (requiring that, upon the conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino failed to properly identify his general business account in violation of

- HRPC Rule 1.15(b) (requiring a lawyer to prominently label each client trust account, as well as deposit slips and checks drawn thereon, as a "client trust account," and requiring a lawyer to prominently label each business account as a "business account," "office account," or appropriate business-type account); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Respondent Yoshino falsely certified on his annual attorney registration statements that he maintained his clients' funds, property, books and records in accordance with HRPC Rule 1.15 and Rule 11 of the Rules of the Supreme Court of the State of Hawai'i (RSCH), and, thus, Respondent Yoshino violated

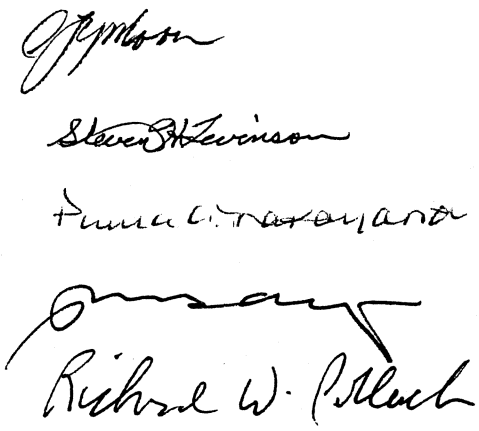
- HRPC Rule 8.4(c) (providing that it is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and

- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Therefore,

IT IS HEREBY ORDERED that Respondent Roy M. Yoshino (attorney number 1419) is suspended from the practice of law in Hawai'i for a period of one (1) year and one (1) day, effective thirty (30) days after entry of this order, as RSCH Rule 2.16(c) provides. Respondent Yoshino shall comply with all requirements of RSCH Rule 2.16, and Respondent Yoshino 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).

IT IS FURTHER ORDERED that Respondent Roy M. Yoshino (attorney number 1419) shall successfully complete, at his own expense, the mandatory Hawai'i Professionalism course (that is

conducted under the joint sponsorship of the Hawai'i State Bar and the Supreme Court of Hawai'i pursuant to RSCH Rule 1.14) before Respondent Yoshino petitions for reinstatement.

DATED: Honolulu, Hawai'i, November 29, 2005.