

NO. 27314

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner

vs.

RICHARD Y.S. LEE, Respondent

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 SEP 30 PM 3:11

FILED

(ODC 02-283-7481, ODC 02-290-7488, ODC 03-187-7787)

ORDER OF DISBARMENT

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

Upon consideration of (1) the Disciplinary Board's May 26, 2005 report and recommendation for the disbarment of Respondent Richard Y. S. Lee (Respondent Lee), (2) Respondent Lee's July 18, 2005 opening brief, (3) Petitioner Office of Disciplinary Counsel's (Petitioner ODC) August 12, 2005 answering brief, (4) Respondent Lee's August 26, 2005 reply brief, and (5) the record, we conclude that Petitioner ODC proved by clear and convincing evidence that Respondent Lee included the following provision in his attorney-client agreements:

. . . . Office of Disciplinary Counsel. The Law Firm believes that the Office of Disciplinary Counsel ("ODC") regularly interferes with a Law Firm's right to contract with and individual attorney's right to earn a living by constantly getting involved in attorney-client fee disputes rather than merely overseeing ethical issues. The ODC's violation of rights to due process is tantamount to price fixing and a monopoly on the legal field. The Law Firm will not agree to accept your matter without your agreement and acceptance of the terms and conditions set forth in this Agreement.

a. In the event of a fee dispute, you agree to first inform the Law Firm to allow them the opportunity to resolve the same. If the fee dispute is not resolved within 30 days of notice of the same, you agree to submit the

matter to binding arbitration as called for in paragraph 13 hereinabove before filing any complaint with the ODC.

b. If the ODC becomes involved prior to settlement by binding arbitration, you agree to pay the Law Firm liquidated damages in the amount of \$2,000.00.

c. Any complaint made to the ODC with a malicious intent to harm the reputation of the Law Firm or any one of it's [sic] attorneys, shall be subject to civil action and damages allowable under the law.

d. Any communication between you and the ODC shall be discoverable and communicated in writing to the Law Firm within five (5) days of such communication.

This paragraph is included to minimize the ODC's constant interference with the Law Firm's right to contract and attorney's right to earn a living, free of price fixing or regulation.

Petitioner ODC's Exhibit 2 at 6; Petitioner ODC's Exhibit 7 at 5; Petitioner ODC's Exhibit 12 at 6. By including the ODC-related provision in attorney-client agreements, Respondent Lee violated the following Hawai'i Rules of Professional Conduct (HRPC):


- HRPC Rule 1.5(a) (requiring that a lawyer's fee shall be reasonable);
- HRPC Rule 8.3(d)(2) (prohibiting a lawyer from offering, agreeing to, attempting, negotiating, entering into, or acquiescing in the formation of any agreement limiting the ability of the lawyer or any other person to file a disciplinary complaint against any lawyer or to cooperate with a disciplinary proceeding or investigation);
- HRPC Rule 8.4(a) (providing that it is professional misconduct for a lawyer to violate or attempt or violate the rules of professional conduct, knowingly assist or induce another to do so or do so through the acts of another); and
- HRPC Rule 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

In addition, the following seven factors aggravated Respondent Lee's misconduct: (1) discipline in eight prior disciplinary matters since 1996 alone; (2) a dishonest and selfish motive; (3) a pattern of deliberate misconduct; (4) multiple offenses; (5) refusal to acknowledge the wrongful nature of Respondent

Lee's misconduct; (6) the vulnerability of Respondent Lee's victims; and (7) Respondent Lee has been licensed to practice law in Hawai'i since 1973 and has substantial legal experience. The record supports the hearing committee's findings of fact and conclusions of law for ODC 02-283-7481, ODC 02-290-7488, and ODC 03-187-7787. We hereby adopt the Disciplinary Board's recommendation to disbar Respondent Lee. Therefore,

IT IS HEREBY ORDERED that Respondent Richard Y. S. Lee Lee (attorney number 1322) is disbarred from the practice of law in Hawai'i, effective thirty (30) days after entry of this order, as RSCH Rule 2.16(c) provides.

DATED: Honolulu, Hawai'i, September 30, 2005.


Steven H. Larrison
James E. Duggan Jr.

NAKAYAMA AND ACOBA, JJ., DISSENTING

Based on the record before us and in the absence of any prior suspension, we do not agree with disbarment but would impose a sanction of five years' suspension from the practice of law.

