

NO. 25697

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

JAMES G. CHING, Respondent.

(ODC 01-291-7035, ODC 02-029-7227,
ODC 03-283-7883 and ODC 03-311-7911)

ORDER OF DISBARMENT

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

Upon consideration of (1) the Disciplinary Board's May 10, 2006 report and recommendation for the disbarment of Respondent James G. Ching (Respondent Ching), (2) Respondent Ching's lack of objection, as exhibited by his failure to request briefing as permitted by Rule 2.7(d) of the Rules of the Supreme Court of the State of Hawai'i (RSCH), and (3) the record, we conclude that Petitioner Office of Disciplinary Counsel (Petitioner ODC) proved by clear and convincing evidence that, while Respondent Ching represented Mildred Kihamahana, Scott Mitsuo Maxwell and Taischa Monette in litigation matters, Respondent Ching committed the following violations of the Hawai'i Rules of Professional Conduct (HRPC):

- four violations of HRPC Rule 1.3 (requiring a lawyer to act with reasonable diligence in representing a client);
- one violation of HRPC Rule 1.4(a) (requiring that a lawyer must keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information);
- one violation of HRPC Rule 1.4(b) (requiring that a lawyer shall explain a matter to the extent reasonably

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necessary to permit a client to make informed decisions regarding the representation);

- one violation of HRPC Rule 1.15(a)(1) (requiring a lawyer in private practice to maintain a trust account separate from business or personal accounts);
- one violation of HRPC Rule 1.15(c) (prohibiting a lawyer from commingling or misappropriating client funds);
- one violation of HRPC Rule 1.15(d) (requiring a lawyer to deposit all client funds and unearned retainer fees into a client trust account);
- one violation of HRPC Rule 1.15(f)(3) (requiring a lawyer to maintain complete records of all client funds for at least six years after completion of the employment to which they relate);
- one violation of HRPC Rule 1.15(g) (requiring a lawyer to maintain several specifically enumerated types of financial records for at least six years after completion of the employment to which they relate);
- one violation of HRPC Rule 1.15(h) (requiring a lawyer to maintain financial books and records in such a way so that the financial books and records are available at the lawyer's principal Hawai'i office where they are available for inspection by the ODC, and stored in such a way so that printed copies can be made on demand);
- one violation of HRPC Rule 1.16(d) (requiring a lawyer to refund unearned fees to a client upon termination of representation);
- four violations of HRPC Rule 3.2 (requiring a lawyer to make reasonable efforts to expedite litigation consistent with the legitimate interests of the client);
- four violations of HRPC Rule 3.4(e) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists);
- four violations of HRPC Rule 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a lawful

demand for information from a disciplinary authority);

- thirteen violations of HRPC Rule 8.4(a) (prohibiting a lawyer from violating the rules of professional conduct); and
- four violations of HRPC Rule 8.4(d) (prohibiting a lawyer from failing to cooperate during the course of an ethics investigation).

With respect to Respondent Ching's misappropriation of client funds, we note that, absent strong mitigating circumstances, "misappropriating the funds of his clients violates the most basic rule of professional responsibility and requires the severest disciplinary sanction." Office of Disciplinary Counsel v. Lau, 85 Hawai'i 212, 215, 941 P.2d 295, 298 (1997) (citations and internal quotation marks omitted). We find no mitigating circumstances. In addition, Respondent Ching has demonstrated a disturbing pattern of recidivism in his professional misconduct, as evidenced by the five previous letters of informal admonition that Petitioner ODC issued to Respondent Ching in ODC 3677 (October 12, 1993), ODC 3883 (December 1, 1993), ODC 4189 (September 13, 1994), ODC 4784 (January 26, 1998), and ODC 4791 (March 28, 1996), and the May 2, 2003 supreme court order suspending Respondent Ching from the practice of law for one year and one day in ODC 97-283-5477 and ODC 99-134-5964 (supreme court case number 25697). Therefore, disbarment is warranted.

It further appears that, following the entry of the May 2, 2003 order suspending Respondent Ching from the practice of law for one year and one day, Respondent Ching has not been reinstated, and, thus, delaying the effective date of the order of disbarment, as RSCH Rule 2.16(c) provides, is inappropriate. Accordingly,

IT IS HEREBY ORDERED that Respondent James G. Ching (attorney number 2211) is disbarred from the practice of law in the State of Hawai'i, effective immediately.

IT IS FURTHER ORDERED that Respondent James G. Ching (attorney number 2211) shall reimburse the Lawyers' Fund for Client Protection of the Bar of Hawai'i in the sum of \$1,500.00 for the payment that the Lawyers' Fund for Client Protection of the Bar of Hawai'i made to Taischa Monette due to Respondent Ching's misappropriation of her funds.

DATED: Honolulu, Hawai'i, June 6, 2006.



Vance E. Dill, G.