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Supreme Court
SCAD-12-0000405
15-FEB-2013
09:16 AM

NO. SCAD-12-0000405

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

ANDRÉ S. WOOTEN, Respondent.

ORIGINAL PROCEEDING
(ODC 08-054-8697)

ORDER OF SUSPENSION

(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Upon consideration of the Report and Recommendation of the Disciplinary Board of the Supreme Court of the State of Hawai'i, the briefs submitted by Respondent André S. Wooten and the Office of Disciplinary Counsel (ODC), and the record, we find by clear and convincing evidence Respondent Wooten knowingly and intentionally submitted a declaration to the United States District Court for the District of Hawai'i with an electronic signature of the declarant affixed to it, that Respondent Wooten knew the declarant had not, in fact, approved of the contents of the declaration or authorized his signature be affixed to it, and that Respondent Wooten intended the District Court take the declaration as valid and executed by the declarant, in violation

of Rules 3.3(a) (1), 3.3(a) (4), 3.4(b) and 8.4(c) of the Hawai'i Rules of Professional Conduct (HRPC). We further find by clear and convincing evidence that Respondent Wooten, at a December 3, 2007 hearing on the matter related to the declaration, did rely upon the declaration as authorized and executed by the declarant, and caused opposing counsel and the court to similarly rely upon its authenticity, when he was aware the declarant had not, at that point, affirmed or otherwise authorized the declaration, in violation of HRPC Rules 3.3(a) (1), 3.3(a) (4), 3.4(b) and 8.4(c). We further find by clear and convincing evidence that, upon learning on December 12, 2007 that the declarant declined to ratify and refused to execute the declaration as it had been submitted it to the District Court, Respondent Wooten did not notify opposing counsel or the court, or otherwise take action to remedy his misrepresentation, in violation of HRPC Rules 3.3(a) (4) and 8.4(c). We note the falsified nature of the declaration was revealed when the declarant was deposed on December 19, 2007 by opposing counsel, who brought the matter to the attention of the District Court on December 20, 2007. We view misrepresentation of this nature with the gravest concern and, absent aggravating or mitigating factors, note disbarment or a substantial period of suspension would be warranted. We further find by clear and convincing evidence, in aggravation, Respondent Wooten has substantial experience in the practice of

law, a single prior discipline, and the current matter involved multiple violations. In mitigation, we find Respondent Wooten has accepted responsibility for his actions, was absent a selfish motive, cooperated with the disciplinary investigation and proceedings, that the prior discipline is remote in time and unrelated in character to the current matter, and recognize Respondent Wooten's *pro bono* work and his contributions to the community. Therefore, in light of the recommendation of the Disciplinary Board, and the mitigating factors present,

IT IS HEREBY ORDERED that Respondent Wooten is suspended from the practice of law in this jurisdiction for a period of ninety days, effective 30 days after the date of entry of this order, as provided by Rules 2.3(a)(2) and 2.16(c) of the Rules of the Supreme Court of the State of Hawai'i (RSCH). Respondent is admonished to take note he may not resume the practice of law except by order of the supreme court, as provided by RSCH Rule 2.17(b).

IT IS FURTHER ORDERED that, in addition to any other requirements for reinstatement imposed by the Rules of the Supreme Court of the State of Hawai'i, Respondent Wooten shall pay all costs of these proceedings as approved upon the timely submission of a bill of costs.

IT IS FINALLY ORDERED that Respondent Wooten shall, within ten days after the effective date of his suspension, file

with this court an affidavit in full compliance with RSCH Rule 2.16(d).

DATED: Honolulu, Hawai'i, February 15, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

