

**Electronically Filed
Supreme Court
SCAD-12-0000559
31-OCT-2012
08:20 AM**

NO. SCAD-12-0000559

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

CAROLYN S. KIYOTA, Respondent.

ORIGINAL PROCEEDING
(ODC 08-079-8722)

ORDER OF SUSPENSION

(By: Recktenwald, C.J., Nakayama, Acoba, and Pollack, JJ.
and Intermediate Court of Appeals Associate Judge Ginoza,
in place of McKenna, J., recused)

Upon consideration of the Disciplinary Board's Report and Recommendation for the Disbarment of Respondent Carolyn S. Kiyota, and upon full consideration of all the evidence in the record, this court concludes by clear and convincing evidence that Respondent Kiyota on multiple occasions commingled and misappropriated client funds held in trust, on one occasion paid personal expenses directly from the trust account maintained for client funds, failed to promptly notify third parties of her receipt of funds in which those parties had an interest, failed to promptly pay to those third parties the funds requested and in her possession which those parties were entitled to receive,

knowingly failed, ultimately, to pay those known debtors funds due them, failed to maintain required financial records, including disbursement journals for trust accounts, subsidiary ledgers for each client reflecting the balance of monies held in trust for each client, monthly trust account reconciliations, and records reconciling the subsidiary client trust accounts with the overall trust account balance, in violation of Rules 1.15(c), 1.15(e), 1.15(f) (1), 1.15(f) (3), 1.15(f) (4), 1.15(g) (1), 1.15(g) (2), 1.15(g) (8), 1.15(g) (9) and 8.4(c) of the Hawai'i Rules of Professional Conduct (HRPC). This court further concludes, based upon clear and convincing evidence, that, after June 29, 2011, Respondent Kiyota, in connection with a disciplinary matter, knowingly failed to respond to lawful demands for information from the Office of Disciplinary Counsel and the Disciplinary Board and failed to cooperate with the subsequent disciplinary proceedings, in violation of HRPC Rules 8.1(b) and 8.4(d). In aggravation, this court finds Respondent Kiyota has substantial experience in the practice of law and, in her actions, a pattern of violations over a three-year period involving multiple offenses. In mitigation, this court notes Respondent Kiyota's initial forthright and cooperative attitude, ODC's two-year delay in initiating disciplinary proceedings against her, Respondent Kiyota's expressions of contrition and acknowledgment of her errors, the lack of real injury to any client, her subsequent actions to reimburse parties monies owed them, a lack of a selfish motive, personal events that placed her under considerable stress, and her clean disciplinary record

prior to the present matter. Therefore, suspension being warranted,

IT IS HEREBY ORDERED that Respondent Kiyota is suspended from the practice of law in this jurisdiction for one year and one day, effective 30 days from 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 Kiyota shall be allowed to apply for reinstatement to the practice of law after the passing of one half the period of suspension, as provided by RSCH Rule 2.17(b).

IT IS HEREBY 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 Kiyota shall pay all costs of these proceedings as approved upon timely submission of a bill of costs, as authorized by RSCH Rule 2.3(c).

IT IS FURTHER ORDERED that Respondent Kiyota shall, within 10 days after the date of this order, file with this court an affidavit in full compliance with RSCH Rule 2.16(d).

DATED: Honolulu, Hawai'i, October 31, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Richard W. Pollack

/s/ Lisa M. Ginoza

