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Supreme Court
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SCAD-13-0006297

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,

vs.

ANDREW A. AGARD,
Respondent.

ORIGINAL PROCEEDING
(ODC 13-063-9133)

ORDER GRANTING PETITION

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

Upon consideration of the petition for the immediate restraint of Respondent Andrew A. Agard from the practice of law, filed on December 31, 2013 by the Office of Disciplinary Counsel (ODC) pursuant to Rule 2.13(a) of the Rules of the Supreme Court of the State of Hawai'i (RSCH), the January 28, 2014 order of this court, and Respondent Agard's timely February 7, 2014 response to that order, the court notes the conviction in the United States District Court for the District of Hawai'i of Respondent Agard for filing a false tax return, in violation of 26 U.S.C. § 7206(1), is a crime involving dishonesty or false statement, and would be a felony if committed in Hawai'i. Furthermore, it appears Respondent Agard has closed his legal

practice and transferred his clients to other attorneys, and that an appeal of his underlying federal criminal conviction is pending in the United States Court of Appeals for the Ninth Circuit. Finally, we find no good cause has been presented by Respondent Agard or is evident in the record to justify refraining from immediately restraining Agard from the practice of law in this jurisdiction, pursuant to RSCH Rule 2.13(c). Therefore,

IT IS HEREBY ORDERED that ODC's petition is granted.

IT IS FURTHER ORDERED that Respondent Agard is immediately restrained from the practice of law, pursuant to RSCH Rule 2.13(b), pending final disposition of a disciplinary proceeding based on the finding of guilt.

IT IS FURTHER ORDERED that this matter is referred to the Disciplinary Board of the Supreme Court of the State of Hawai'i for institution of a formal proceeding in which the sole issue to be determined shall be the discipline to be imposed, though the Board is reminded, in light of Respondent Agard's pending appeal and in keeping with RSCH Rule 2.13(d), that the matter shall not be brought to hearing until Respondent Agard's conviction is final, as defined by RSCH Rules 2.13(d)(1) and (2), or Respondent Agard requests the proceedings to continue notwithstanding the pending appeal.

DATED: Honolulu, Hawai'i, February 25, 2014.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

