

SUPREME COURT OF THE STATE OF HAWAII

Office of Disciplinary Counsel v. Khaled S. Mujtabaa

SCAD-14-0000799 · No. SCAD-14-0000799 · Decided June 24, 2014

SUMMARY

The Supreme Court of Hawai'i suspended attorney Khaled S. Mujtabaa from practicing law for 180 days based on findings of neglect, failure to communicate, mishandling and misappropriation of client funds, and related violations of the Hawai'i Rules of Professional Conduct in two disciplinary matters. The court also ordered a practice audit, payment of proceeding costs, and compliance with reinstatement-related requirements.

CASE DETAILS

COURT	Supreme Court of the State of Hawai'i
WRITING FOR THE COURT	Mark E. Recktenwald, C.J.; Paula A. Nakayama, J.; Sabrina S. McKenna, J.; Richard W. Pollack, J.; Michael W. Wilson, J.
JURISDICTION	Hawaii
DECIDED	June 24, 2014
DOCKET	SCAD-14-0000799
DISPOSITION	other
PROCEDURAL POSTURE	Original disciplinary proceeding before the Supreme Court of the State of Hawai'i following the Disciplinary Board's report and recommendation for a 45-day suspension; the court conducted a de novo review of the stipulated facts and record.
STANDARD OF REVIEW	De novo review of the stipulated facts and evidence in the record, with violations required to be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published disciplinary order; binding as to the adjudicated violations and sanction imposed in this proceeding.
PARTIES	Office of Disciplinary Counsel v. Khaled S. Mujtabaa

TOPICS

sanctions

attorney fees

civil procedure

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Mujtabaa violated the specified Hawai'i Rules of Professional Conduct through neglect, failure to expedite litigation, inadequate communication, improper fee withdrawals, failure to explain fee bases and rates, failure to account, and trust-account misappropriation.
2. Whether a period of suspension was appropriate in light of the misconduct, aggravating factors, and mitigating factors.
3. What disciplinary and reinstatement-related conditions should be imposed.

HOLDINGS

1. Mujtabaa violated HRPC Rules 1.3 and 3.2 by failing to timely file the client's settlement motion and resolve foreclosure issues; HRPC Rule 1.1 by failing to obtain readily available executed settlement documents and by misrepresenting the status of the matter; HRPC Rules 1.4(a) and (b) by failing to communicate adequately; HRPC Rules 1.15(c) and (d) by misappropriating and withdrawing unearned client funds; and HRPC Rules 1.5(b) and 1.15(f)(3) by withdrawing funds without explaining the fee basis or rate and without providing an accounting.
2. Mujtabaa violated HRPC Rules 1.15(c) and (d) by misappropriating client funds and withdrawing them before they were earned; HRPC Rules 1.3 and 3.2 by failing to file litigation for almost five years and misrepresenting the delays; and HRPC Rules 1.5(b) and 1.15(f)(3) by withdrawing funds without explaining the fee basis or rate and without providing an accounting.
3. A period of suspension was appropriate, and Mujtabaa was suspended from the practice of law in Hawai'i for 180 days.
4. The suspension was made effective 30 days after entry of the order, and Mujtabaa was required to complete a practice audit, pay approved costs, and file an affidavit showing compliance with RSCH Rule 2.16(d).

KEY QUOTATIONS

“upon a de novo review of the stipulated facts and the evidence in the record” (at 1)

“Nevertheless, a period of suspension is appropriate.” (at 3)

FACTUAL BACKGROUND

In one disciplinary matter, Mujtabaa delayed filing a client's settlement motion and addressing foreclosure issues, failed to obtain executed settlement documents, misrepresented the status of the matter, failed to communicate adequately, and withdrew client-trust funds that were not earned or owed. In the second matter, he delayed filing litigation for nearly five years, misrepresented the reasons for delay, and made multiple withdrawals that created substantial trust-account shortfalls and occurred before fees were earned. The court found substantial experience and a pattern of similar misconduct in aggravation, while recognizing remorse, cooperation, lack of dishonest or selfish motive, and remedial continuing-education efforts in mitigation.

PROCEDURAL HISTORY

The Disciplinary Board submitted a report and recommendation to the supreme court on May 2, 2014, recommending, among other relief, a 45-day suspension. After conducting a de novo review, the court found by clear and convincing evidence that Mujtabaa violated multiple Hawai'i Rules of Professional Conduct provisions in two disciplinary matters. The court imposed a 180-day suspension, practice-audit requirements, costs, and an affidavit requirement.

DISPOSITION

other

CASES CITED

- ODC v. Au, 107 Hawai'i 327, 336, 113 P.3d 203, 212 (2005)
- ODC v. Lau, 85 Hawai'i 212, 214, 941 P.2d 295, 297 (1997)
- ODC v. Manuia, SCAD-13-136 (May 20, 2013)
- ODC v. Barrad, No. 27247 (May 16, 2005)
- ODC v. Ching, No. 25697 (May 2, 2003)
- ODC v. Wessel, No. 21817 (August 14, 2000)
- ODC v. Sahara, No. 20535 (December 10, 1997)

OPINION

PER CURIAM.

Electronically Filed Supreme Court SCAD-14-0000799 24-JUN-2014 12:13 PM SCAD-14-0000799 IN THE SUPREME COURT OF THE STATE OF HAWAII OFFICE OF DISCIPLINARY COUNSEL, Petitioner, vs. KHALED S. MUJTABAA, Respondent. ORIGINAL PROCEEDING (ODC CASE NOS. 12-042-9058, 13-036-9106) ORDER OF SUSPENSION (By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the Report and Recommendation of the Disciplinary Board of the Supreme Court of the State of Hawai'i, submitted to this court on May 2, 2014, for the imposition of, inter alia, a 45-day suspension upon Respondent Khaled S. Mujtabaa, and upon a de novo review of the stipulated facts and the evidence in the record, see ODC v. Au, 107 Hawai'i 327, 336, 113 P.3d 203, 212 (2005); ODC v. Lau, 85 Hawai'i 212, 214, 941 P.2d 295, 297 (1997), this court finds and concludes the following by clear and convincing evidence: In Office of Disciplinary Counsel (ODC) Case No. 12 042-9058, Respondent Mujtabaa, by failing to file the client's settlement motion for 14 months or to resolve the client's foreclosure issues, while leading the client to believe he would promptly file appropriate documents and address the foreclosure litigation, resulting in the acceleration of the mortgage and, ultimately, the loss of the client's house, violated Rules 1.3 and 3.2 of the Hawai'i Rules of Professional Conduct (HRPC).¹ By failing to secure a

copy of the readily-obtainable fully executed settlement agreement documents for 10 months, relying on the lack of the document as a justification for not pursuing the matter, and prevaricating concerning the filing of the settlement motion for 15 months, Respondent Mujtabaa violated HRPC Rule 1.1.

By failing to promptly respond to the client's reasonable requests about the case or to keep the client reasonably informed about its status, thereby preventing the client from making informed decisions regarding the mortgage litigation, Respondent Mujtabaa violated HRPC Rules 1.4(a) and (b). By withdrawing \$400.00 from his client trust account on May 17, 2012 for costs associated with the client, when the client did not have a claim to any funds in the account, Respondent Mujtabaa misappropriated and withdrew unearned client funds from other clients, in violation of HRCF Rules 1.15(c) and (d).

By withdrawing the client's funds 1 All HRPC Rules cited herein are those in effect at the time of the conduct underpinning the violation. 2 on September 23, 2011, January 26 and February 3, February 6, and February 17, 2012, without explaining to the client the basis or rate for earning the fee short of completing the representation and without providing an accounting, Respondent Mujtabaa violated HRPC Rule 1.5(b) and 1.15(f)(3).

In ODC Case No. 13-036-9106, by withdrawing funds from his client trust account for other matters, bringing the balance of the account below the level of funds to which the client in question had a rightful claim, specifically creating a \$520.97 shortfall on May 7, 2008, a \$1,825.80 shortfall on September 19, 2008, and a \$2,213.84 shortfall on December 31, 2009, Mujtabaa misappropriated the client's funds and withdrew them before they were earned, in violation of HRCF Rules 1.15(c) and (d).

By failing to file the client's litigation for almost five years, and prevaricating concerning the delays, Respondent Mujtabaa violated HRPC Rules 1.3 and 3.2. By withdrawing the client's funds from his client trust account on March 10 and March 20, 2008, December 17, 2009, October 29, 2010, and June 10, 2011, without explaining to the client the basis or rate for earning the fee without completing the representation, and without providing an accounting, Respondent Mujtabaa violated HRPC Rules 1.5(b) and 1.15(f)(3).

In aggravation, we note Mujtabaa's substantial experience in the practice of law and a pattern of similar 3 misconduct between the two disciplinary matters. In mitigation, we note Respondent Mujtabaa's remorse, his cooperative attitude toward the proceedings, the absence of a dishonest or selfish motive, and his efforts to address the shortcomings in his practice through the completion of Continuing Legal Education training.

Nevertheless, a period of suspension is appropriate. See ODC v. Manuia, SCAD-13-136 (May 20, 2013); ODC v. Barrad, No. 27247 (May 16, 2005); ODC v. Ching, No. 25697 (May 2, 2003);

ODC v. Wessel, No. 21817 (August 14, 2000); ODC v. Sahara, No. 20535 (December 10, 1997).

Therefore, IT IS HEREBY ORDERED that Respondent Khaled S. Mujtabaa is suspended from the practice of law in this jurisdiction for 180 days, effective 30 days after the entry date 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). IT IS FURTHER ORDERED that Respondent Mujtabaa shall complete an audit of his practice by the Practicing Attorneys Liability Management Society or equivalent program and submit proof of completion of the audit and adoption of its recommendations within 375 days of the date of entry of this order, or good cause for an extension.

Respondent Mujtabaa is hereby notified that failure to timely complete the audit and submit the subsequent report may result in an additional period of suspension, upon review of the record. 4 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 Mujtabaa shall pay all costs of these proceedings as approved upon the timely submission of a bill of costs, as prescribed by RSCH Rule 2.3(c).

IT IS FINALLY ORDERED that Respondent Mujtabaa shall, within 10 days after the effective date of his suspension, file with this court an affidavit that he is in full compliance with RSCH Rule 2.16(d). DATED: Honolulu, Hawai'i, June 24, 2014. /s/ Mark E. Recktenwald /s/ Paula A. Nakayama /s/ Sabrina S. McKenna /s/ Richard W. Pollack /s/ Michael W. Wilson 5