

NOTICE OF SUSPENSION

Case Nos. 27-88; 44-88

Allen W. Davey, P-27194, Captain Cook, HI by an Order of the Attorney Discipline Board increasing a 6-month suspension imposed by the Hearing Panel.

- 1) Suspension - 2 years;
- 2) Effective July 8, 1988.

In accordance with his written agreement with another attorney, the Respondent held the sum of \$10,000 in trust pending a resolution of the competing claims of their respective clients. He subsequently left the State of Michigan taking the funds with him to the State of Hawaii where they were admittedly deposited into the Respondent's personal checking account. The Complaint filed by the Administrator charged that the Respondent's improper commingling and misappropriation of those funds resulted in the return of the check for non-sufficient funds when he attempted to disburse the funds to opposing counsel.

Although the Respondent did not appear at the hearing, he alleged in his answer to the Complaint that the shortfall of funds was inadvertent and that a friend had mistakenly written other checks on the account. The full amount of \$10,000 was subsequently transferred to opposing counsel. The Hearing Panel found that Respondent's conduct constituted a violation of Canon 9 of the Code of Professional Responsibility DR 9-102(A).

By a majority, the Attorney Discipline Board increased the 6-month suspension imposed by the Hearing Panel to a suspension of two years in light of the Respondent's willful disregard for his duties as a fiduciary and the aggravating effect of his failure to appear personally at any stage of the disciplinary proceedings. In a dissenting opinion, two members of the Board expressed a belief that misuse of client funds in this case warranted revocation. Costs were assessed in the amount of \$311.41.