

FILED

December 8 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 14-0698

IN THE SUPREME COURT OF THE STATE OF MONTANA

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE MATTER OF: ELMER S. RHODES,

An Attorney at Law,

ORDER

Respondent.

On October 8, 2015, an Adjudicatory Panel of the Commission on Practice (Commission) met for a hearing on the formal Amended Complaint filed against the Respondent.

According to the Commission's Findings of Fact, Conclusions of Law, and Recommendation, this proceeding involved two grievances filed against the Respondent. The first was filed by United States District Court Judge David Campbell of the District of Arizona, which alleged that Respondent improperly filed an appearance in Judge Campbell's court without license or an application to appear *pro hac vice*. The second was filed by a client of Respondent's who alleged that Respondent had provided incompetent representation and abandoned the client's cases in Arizona Federal Court.

The Office of Disciplinary Council (ODC) twice served each of the grievances upon Respondent by certified mail, and none of those four mailings were returned as undeliverable. The Commission found that the U.S. Postal Service tracking information confirmed that at least one mailing of each grievance was delivered to Respondent's designated address for his Bar membership, in Kalispell, Montana. The mailings from ODC lawfully required that Respondent respond to the grievances. However, Respondent failed to provide a response to either grievance. Consequently, the Commission issued an order to show cause directing Respondent to appear and show

cause why appropriate discipline or sanction should not be imposed for his refusal to respond to ODC's demands for a response, or to justify his refusal. Respondent failed to appear at the scheduled time for the hearing, was not represented by counsel, and did not attempt to contact the Commission to request an extension of time, or at all. The ODC then filed a formal complaint, later amended, and had Respondent served with the complaint by the sheriff. Respondent did not respond to ODC's complaint.

Based upon this record, the Commission concluded that Respondent had twice violated Rules 8.1(b), Montana Rules of Professional Conduct (MRPC), and Rule 8A(6), Montana Rules of Lawyer Disciplinary Enforcement (MRLDE), by his failure to respond to lawful demands for information from lawyer disciplinary authorities. Respondent also violated these rules for failing to appear as ordered before the Commission to justify his failure to respond, which is prejudicial to the administration of justice, a violation of Rule 8.4(d), MRPC. The Commission reasoned that, although Respondent's conduct does not involve conduct that has historically been the basis of disbarment by this Court, Respondent's refusal to cooperate in the disciplinary process constituted a knowing and intentional disregard of his obligations as an attorney, both to the profession and the public and, therefore, he should forfeit the privilege of practicing law in Montana and be disbarred. The Commission also recommended that Respondent be assessed with the costs of these proceedings.

The Commission filed its Findings of Fact, Conclusions of Law, and Recommendation in this matter on October 26, 2015, certifying that Respondent was served by mail on the same date. Pursuant to Rule 16, MRLDE, Respondent had "thirty days from the date of service within which to file with the Court objections to the findings of fact, conclusions of law, and recommendation of discipline, and a written brief in support thereof." Nothing has been filed by Respondent in response to the Commission's filing. The Rule further provides that, "in the event objections are not filed by the lawyer, the matter shall be deemed submitted and the Court shall determine the appropriate discipline. . . ."

We have reviewed the findings, conclusions, and recommendations of the Commission. Respondent has not filed objections, and we agree with and adopt the recommendations in their entirety. Based upon the foregoing,

IT IS HEREBY ORDERED:

1. Respondent Elmer S. Rhodes is disbarred from the practice of law in the State of Montana effective immediately.

2. Respondent shall pay the reasonable and necessary costs of these proceedings subject to the provisions of Rule 9(A)(8), MRLDE, allowing objections to be filed to the statement of costs.

3. Pursuant to Rule 30, MRLDE, within ten days of this order, Respondent shall notify, or cause to be notified, the following individuals of his disbarment and that he will be disqualified to further act on any matter: (a) all clients he represents in pending matters; (b) any co-counsel in pending matters; (c) any opposing counsel in pending matters or, in the absence of such counsel, the adverse parties; and (d) the judges in all pending cases. Respondent shall further comply with the remaining provisions of Rules 30(B), 30(C) and 31.

4. Within twenty days of the effective date of his disbarment, Respondent shall further comply with Rule 32, MRLDE, by filing the required affidavits.

5. The Clerk of this Court shall serve a copy of this Order of Discipline upon the Respondent; and shall provide copies to the Office of Disciplinary Counsel; Office Administrator for the Commission on Practice; the Clerks of all the District Courts of the state of Montana with the request that each Clerk provide a copy to each district judge for that Clerk's county; the Clerk of the Federal District Court for the District of Montana; the Clerk of the Circuit Court of Appeals of the Ninth Circuit; and the Executive Director of the State Bar of Montana.

DATED this 8th day of December, 2015.



Chief Justice

Jim Rice

James O'Neil

Pete Baker

Michael E. Wear

Jim Jimb

Patricia Cotter

Justices