

Received
Washington State Supreme Court

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Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

Kenneth Mark Anderson,

Lawyer (Bar No. 14246).

Supreme Court No. 201461-5

ODC'S PETITION FOR
INTERIM SUSPENSION
[ELC 7.2(a)(3)]

Under Rule 7.2(a)(3) of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association petitions this Court for an Order of Interim Suspension of Respondent Kenneth Mark Anderson pending cooperation with the disciplinary investigation.

This Petition is based on the Declaration of Disciplinary Counsel Randy Beitel, filed with this Petition.

STATEMENT OF GROUNDS/ARGUMENT

Respondent Kenneth Mark Anderson failed to respond to ODC's requests that he respond to a grievance filed against him, and failed to appear at a non-cooperation deposition for which he was subpoenaed.

Respondent failed to appear, testify and produce records in response to a subpoena duces tecum issued by Disciplinary Counsel under ELC 5.3(h)(1). The subpoena was issued due to Respondent's failure to respond to multiple requests for additional information related to a grievance filed against him.

It is necessary to obtain Respondent's response, testimony and records so ODC can determine whether Respondent has complied with the Rules of Professional Conduct (RPC). By refusing to provide the complete response requested and/or appear for deposition and produce the records as subpoenaed, Respondent has impeded and delayed the disciplinary process. Accordingly, ODC asks this Court to order Kenneth Mark Anderson's immediate interim suspension pending compliance with ODC's request for a response to this investigation and pending his appearance for deposition and production of the documents that have been subpoenaed.

STANDARD

Under ELC 7.2(a)(3), a respondent lawyer may be immediately suspended from the practice of law when a lawyer fails without good cause to comply with a request from ODC for information or documents or fails without good cause to comply with a subpoena.¹ Kenneth Mark Anderson's failure to comply with ODC's requests to provide a complete

¹ ELC 7.2(a)(3) provides:

When any lawyer fails without good cause to comply with a request under rule 5.3(g) for information or documents, or with a subpoena issued under rule 5.3(h), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If a lawyer has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

response to a grievance filed against him, and his failure to appear for a deposition for which he was subpoenaed and to produce the documents that had been subpoenaed meets this standard.

EFFECT OF RESPONDENT'S FAILURE TO COOPERATE

The lawyer discipline system provides “protection of the public and preservation of confidence in the legal system.” In re Disciplinary Proceeding Against McMurray, 99 Wn.2d 920, 930, 655 P.2d 1352 (1983). Given the limited resources available to investigate allegations of lawyer misconduct, “such investigations depend upon the cooperation of attorneys.” Id. at 931.

“Compliance with these rules is vital.” In re Disciplinary Proceeding Against Clark, 99 Wn.2d 702, 707, 663 P.2d 1339 (1983). Because Respondent has not produced the requested records, nor provided a complete response to the grievance filed against him, nor appeared for his scheduled deposition, the Association has not been able to determine whether Respondent has complied with the RPC. ODC’s effective and timely investigation of the grievance and protection of the public has been impeded and delayed.

CONCLUSION

Respondent's failure to cooperate with a disciplinary investigation is an ongoing violation of ELC 7.2(a)(3). Accordingly, ODC asks the Court to issue an order to show cause under ELC 7.2(b)(2) requiring Kenneth Mark Anderson to appear before the Court on such date as the Chief Justice may set, and show cause why this petition for interim suspension should not be granted.

DATED THIS 5th day of October, 2015.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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