

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re

Frank J. Prohaska,
Lawyer (Bar No. 27589).

Supreme Court No. 2014763

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 Frank J. Prohaska pending cooperation with the disciplinary investigation.

This Petition is based on the Declaration of Disciplinary Counsel Francesca D'Angelo, filed with this Petition.

STATEMENT OF GROUNDS/ARGUMENT

Respondent Frank J. Prohaska failed to respond to ODC's requests that he respond to a grievance filed against him as required by ELC 5.3(g). Respondent then failed to appear at a non-cooperation deposition and failed to produce client file records in response to a subpoena duces tecum issued by Disciplinary Counsel under ELC 5.3(h)(1).

It is necessary to obtain Respondent's response and records so ODC can determine whether or not the grievance has merit. By refusing to respond to ODC's requests for information, Respondent has impeded

and delayed the disciplinary process. Accordingly, ODC asks this Court to order Frank J. Prohaska's immediate interim suspension pending compliance with ODC's investigation.

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 Frank J. Prohaska's failure to comply with ODC's requests for his response to a grievance and his failure to comply with a subpoena 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

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.

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 client file information, or responded to the grievance, or appeared for a deposition, the Association has not been able to determine whether or not the grievance has merit. ODC’s effective and timely investigation of the grievance and protection of the public has been impeded and delayed.

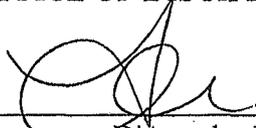
CONCLUSION

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 Frank J. Prohaska 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 12 day of November, 2015.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



Francesca D'Angelo, Bar No. 22979
Disciplinary Counsel
1325 4th Avenue, Suite 600
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

Frank J. Prohaska,

Lawyer (Bar No. 27589).

Supreme Court No. _____

DECLARATION OF MAIL
SERVICE

The undersigned Disciplinary Counsel of the Washington State Bar Association declares that she caused a copy of the ELC 7.2(a)(3) Petition for Interim Suspension to be mailed by regular first class mail with postage prepaid on November 12, 2015 to:

Frank J. Prohaska
1001 4th Ave Ste 3200
Seattle, WA 98154-1003

Frank J. Prohaska


I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

Seattle, WA 11/12/15
Date and Place



Francesca D'Angelo,
Bar No. 22979
Disciplinary Counsel
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8294

OFFICE RECEPTIONIST, CLERK

To: Carol Kinn
Cc: Allison Sato; Francesca D'Angelo
Subject: RE: In Re Frank J. Prohaska, Bar No. 27589

Received 11/12/15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Carol Kinn [mailto:carolk@wsba.org]
Sent: Thursday, November 12, 2015 3:31 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Allison Sato <Allisons@wsba.org>; Francesca D'Angelo <Francescad@wsba.org>
Subject: In Re Frank J. Prohaska, Bar No. 27589

Dear Mr. Carpenter:

Attached are the following documents: 1) Petition for Interim Suspension of Frank J. Prohaska, 2) Declaration of Disciplinary Counsel, and 3) Declaration of Mail Service.

Sincerely,

Carol Kinn

Carol M. Kinn
Legal Administrative Assistant
Washington State Bar Association
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