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FILED

SEP 15 2016

WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

<p>In re</p> <p>Kenneth Mitchell-Phillips Sr.,</p> <p>Lawyer (Bar No. 47720).</p>	<p>Supreme Court No.</p> <p>ODC'S PETITION FOR INTERIM SUSPENSION [ELC 7.2(a)(3)]</p>
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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 Mitchell-Phillips Sr. pending cooperation with the disciplinary investigation.

This Petition is based on the Declaration of Disciplinary Counsel Erica Temple, filed with this Petition.

STATEMENT OF GROUNDS/ARGUMENT

Respondent ignored ODC's requests that he respond to two grievances filed against him. He was subpoenaed under ELC 5.3(h)(1) to appear at a non-cooperation deposition. He failed to appear.

It is necessary to obtain Respondent's response so ODC can determine whether Mr. Mitchell-Phillips may have committed ethical violations. By refusing to respond, Mr. Mitchell-Phillips has impeded and delayed the disciplinary process. Accordingly, ODC asks this Court to

order Mr. Mitchell-Phillips'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 the 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 Mr. Mitchell-Phillips's failure to comply with ODC's requests for responses and ODC's 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, disciplinary proceedings depend upon the cooperation of attorneys. In re Disciplinary Proceeding Against Scannell, 169 Wn.2d 723, 738, 239 P.3d 332 (2010). Compliance with disciplinary requests and investigations is “vital.” Id. Noncompliance impedes the investigation of possible misconduct and undermines the effectiveness of the regulatory system. McMurray, 99 Wn.2d at 930-31.

Because Mr. Mitchell-Phillips has not responded to the grievances or appeared for a deposition, the ODC has not been able to conduct a complete investigation in this matter. ODC’s effective and timely investigation of the grievance and protection of the public has been impeded and delayed.

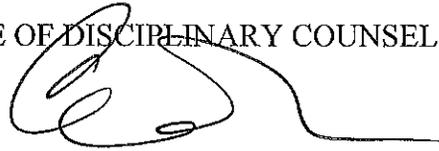
CONCLUSION

Respondent’s failure to cooperate with a disciplinary investigation is an ongoing violation of the duty to cooperate with a disciplinary investigation as set forth in ELC 5.3(f) and ELC 5.5(d). Accordingly, ODC asks the Court to issue an order to show cause under ELC 7.2(b)(2) requiring Mr. Mitchell-Phillips 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 13th day of September, 2016.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

A handwritten signature in black ink, appearing to read "Erica Temple", written over a horizontal line.

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