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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Eric Carl Einhorn, Lawyer (Bar No. 18890).	Supreme Court No. 201494-1 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 Eric Carl Einhorn 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 Eric Carl Einhorn failed to respond to ODC's repeated requests that he respond to two grievances filed against him. As set forth in greater detail in the accompanying Declaration of Disciplinary Counsel, Respondent is a Washington lawyer who resides in the State of Oregon who is currently serving a one-year reciprocal disciplinary suspension that was effective March 17, 2015. In January 2015, a former client of Respondent filed a grievance with ODC and Respondent was requested to respond within thirty days of January 29, 2015. In February 2015, a relat-

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ed grievance was filed with ODC and Respondent was requested to respond within thirty days of March 2, 2015. Although these requests had been mailed to Respondent at his mailing address on file with the Washington State Bar Association ("the Association"), each was returned by the U.S. Postal Service marked "Return to Sender – Unable to Forward."

In April and May 2015, copies of the grievances were mailed to Respondent at three additional addresses that ODC had used to communicate with Respondent in the prior disciplinary proceeding, but which Respondent had not designated to the Association as his mailing address. Mailings to two of these additional addresses were returned by the U.S. Postal Service as undeliverable and unable to forward. The mailing to one of the additional addresses, a P. O. Box, was not returned to the WSBA. In addition, in April 2015 copies of the two grievances were sent by attachments to e-mail addresses for Respondent. Nonetheless, Respondent failed to respond to the two grievances.

In July 2015, disciplinary counsel had an ODC investigator locate Respondent. An inquiry to the Postmaster regarding the P. O. Box address yielded a new street address for Respondent in Mosier, Oregon. On or about September 17, 2015, the ODC investigator located Respondent at the Mosier address, delivered to him copies of the two grievances, and secured his assurance that he would contact disciplinary counsel.

On September 28, 2015 Respondent telephoned disciplinary counsel, confirmed his Mosier address, and acknowledged that he was working on responses to the two grievances. Respondent acknowledged that his responses to the two grievances were overdue and he agreed to file those responses by October 7, 2015. Despite this assurance, Respondent did not file responses to the two grievances and on October 29, 2015, disciplinary wrote to Respondent at the Mosier address advising him that if he did not within ten days provide the written responses, ODC would subpoena him for deposition and/or petition for his interim suspension. Respondent has not filed any response to the two grievances nor has he provided any explanation for his failure to provide the grievance responses that he assured disciplinary counsel would be filed by October 7, 2015.

It is necessary to obtain Respondent's responses so ODC can determine whether or not the grievances have merit. Accordingly, ODC asks this Court to order Eric Carl Einhorn'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] Because Respondent is outside the jurisdiction of a Washington subpoena, disciplinary has not attempted to serve a subpoena on Respondent, and instead is pursuing this petition for interim suspension based on Respondent's repeated failure to comply with ODC's requests for his responses to the two grievances.

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).

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[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.

Because Respondent has not responded to the grievances, ODC has not been able to determine whether the grievances have merit. By refusing to respond to the grievances against him, Respondent necessitated ODC expending the resources of an investigator to locate him in Oregon. ODC's effective and timely investigation of the grievances and the protection of the public has been impeded and delayed.

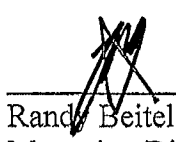
CONCLUSION

Respondent's failure to cooperate with the 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 Eric Carl Einhorn 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 28th day of December, 2015.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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OFFICE RECEPTIONIST, CLERK

To: Carol Kinn
Cc: Chandler, Desiree R.; Allison Sato; Randy Beitel; ericeinhorn.2.0@gmail.com
Subject: RE: Attached documents for filing in Re Eric Carl Einhorn

Received 12-28-2015

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: Monday, December 28, 2015 4:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Chandler, Desiree R. <Desiree.Chandler@courts.wa.gov>; Allison Sato <Allisons@wsba.org>; Randy Beitel <randyb@wsba.org>; ericeinhorn.2.0@gmail.com
Subject: Attached documents for filing in Re Eric Carl Einhorn

Dear Mr. Carpenter:

Attached for filing are the following documents in the case of: In re Eric Carl Einhorn, Bar No. 18890, Proceeding No. 15#00096:

1) ODC's Petition for Interim Suspension

2) Disciplinary Counsel Declaration (attached exhibits to be filed under seal)

3) Declaration of Mail Service

Please send confirmation that these documents have been received.

Thank you.

Carol M. Kinn
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