

ORIGINAL

FILED  
05/30/2017

IN THE SUPREME COURT OF THE STATE OF MONTANA

MAY 30 2017  
Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

PR 16-0026

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Case Number: PR 16-0026  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE MATTER OF TIMOTHY J. WARZECHA,  
An Attorney at Law,

ORDER  
OF  
DISCIPLINE

Respondent.

On January 15, 2016, a formal disciplinary complaint was filed against Montana attorney Timothy J. Warzecha. The disciplinary complaint may be reviewed by any interested persons in the office of the Clerk of this Court.

The Commission on Practice held a hearing on the complaint on October 21, 2016, at which hearing Warzecha was present with his counsel and testified on his own behalf. On April 4, 2017, the Commission submitted to this Court its Findings of Fact, Conclusions of Law, and Recommendation for discipline. Warzecha has filed written objections, and the Office of Disciplinary Counsel (ODC) has filed a written response.

These proceedings arise out of Warzecha's representation of Timothy Blixith, Desert Ranch, LLLP, and Desert Ranch Management, LLC, in adversary proceedings before the Honorable Sam Haddon in the United States District Court for the District of Montana. The Commission has concluded, based on the allegations of the complaint and the evidence produced at the hearing, that Warzecha violated Rule 8.4(c) of the Montana Rules of Professional Conduct (MRPC) by including the name of Philip H. Stillman on pleadings as his co-counsel, representing to the court that Stillman was admitted pro hac vice, and failing to notify the court when he learned Stillman was not in fact admitted pro hac vice. The Commission further concluded Warzecha violated Rule 1.3, MRPC, by failing to promptly notify the court that Stillman was not admitted pro hac vice. The Commission concluded ODC failed to carry its burden of proof as to alleged violations of Rules 1.1, 3.3, and 5.5, MRPC, by Warzecha.

The Commission recommends that, as a result of Warzecha's violations of the Montana Rules of Professional Conduct, he be publicly censured by this Court. It further recommends that a one-year probationary period be imposed upon Warzecha, during which

time he is not authorized or allowed to appear in Montana courts. In addition, the Commission recommends that Warzecha be required to write a letter of apology to Judge Haddon and that he be ordered to pay the costs of these proceedings.

In his objections to the Commission's findings, conclusions, and recommendations, Warzecha contends that Rule 1.3, MRPC, imposes a duty of reasonable diligence and promptness in relation to clients, not courts. However, as ODC points out, Warzecha's failure to act diligently did affect his client—the documents filed with Stillman's name on them were stricken.

Warzecha further contends that, although he made a possibly negligent mistake by leaving Stillman's name on the pleadings, his conduct lacked culpability and did not amount to dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), MRPC. However, the record shows that Warzecha did not notify the court when he learned of his mistake, despite having opportunities to do so. At a minimum, the hearing evidence is sufficient to support a finding of misrepresentation in violation of Rule 8.4(c).

Finally, Warzecha argues the Commission erred in recommending discipline without making specific findings about discipline criteria. There is no requirement, however, that the Commission make specific findings of fact and conclusions of law regarding the form of discipline recommended.

We accept the Commission's Findings of Fact and Conclusions of Law and agree that a public censure, letter of apology to Judge Haddon, and the imposition of costs are appropriate to sanction Warzecha's conduct, but find it unnecessary under the circumstances to impose probation or personal appearance before this Court.

Based upon the foregoing,

IT IS HEREBY ORDERED:

1. The Commission's Findings of Fact, Conclusions of Law, and Recommendation are ACCEPTED and ADOPTED.

2. A written public censure of Timothy J. Warzecha shall forthwith issue from this Court and be publicly distributed in the ordinary course without requirement for personal appearance.

3. Warzecha is hereby directed to promptly write a letter of apology to Judge Haddon, and to send a copy of that letter to ODC.

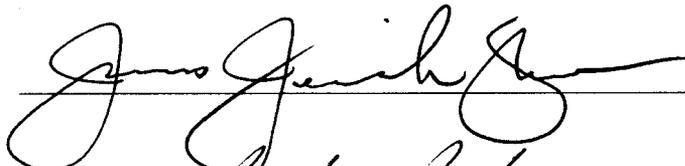
4. Warzecha shall pay the costs of these proceedings subject to the provisions of Rule 9(A)(8), Montana Rules of Lawyer Disciplinary Enforcement, allowing him to file objections to the statement of costs.

The Clerk of this Court is directed to serve a copy of this Order of Discipline upon the Respondent at his last known address and to provide copies to Disciplinary Counsel; the Office Administrator for the Commission on Practice; the Clerks of all the District Courts of the state of Montana; each District Court Judge in the state of Montana; 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.

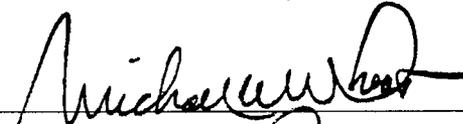
DATED this 25<sup>th</sup> day of May, 2017.

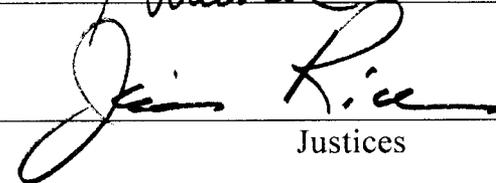
  
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Chief Justice

  
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Justices