

ORIGINAL

FILED

05/21/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 17-0665

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MAY 21 2018

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF JON E. CUSHMAN,)	
)	Supreme Court Cause No. PR 17-0665
An Attorney at Law,)	ODC File No. 15-112
)	
Respondent.)	RESPONDENT'S ANSWER TO
)	AMENDED COMPLAINT

Respondent Jon E. Cushman, for his answer to the Office of Disciplinary Counsel for the State of Montana's ("ODC") Amended Complaint and in accordance with Rule 12(C), Rules for Lawyer Disciplinary Enforcement, admits, denies and alleges as follows:

Any allegations of the ODC's Amended Complaint not specifically admitted, denied, or otherwise answered below, are hereby denied.

1. Answering Paragraph 1 of the ODC's Amended Complaint, Respondent admits, except not certain of dates of *pro hac vice* admission.

2. Answering Paragraph 2 of the ODC's Amended Complaint, Respondent admits.

3. Answering Paragraph 3 of the ODC's Amended Complaint, Respondent admits.

4. Answering Paragraph 4 of the ODC's Amended Complaint, Respondent denies for lack of knowledge.

1 5. Answering Paragraph 5 of the ODC's Amended Complaint, Respondent denies
2 for lack of knowledge.

3 6. Answering Paragraph 6 of the ODC's Amended Complaint, Respondent denies
4 for lack of knowledge.

5 7. Answering Paragraph 7 of the ODC's Amended Complaint, Respondent denies
6 for lack of knowledge; further, this is a legal conclusion, not an alleged fact.

7 8. Answering Paragraph 8 of the ODC's Amended Complaint, Respondent denies
8 for lack of knowledge.

9 9. Answering Paragraph 9 of the ODC's Amended Complaint, Respondent denies
10 for lack of knowledge.

11 10. Answering Paragraph 10 of the ODC's Amended Complaint, Respondent denies
12 for lack of knowledge.

13 11. Answering Paragraph 11 of the ODC's Amended Complaint, Respondent denies
14 for lack of knowledge; and specifically denies the last sentence.

15 12. Answering Paragraph 12 of the ODC's Amended Complaint, Respondent denies
16 for lack of knowledge.

17 13. Answering Paragraph 13 of the ODC's Amended Complaint, Respondent denies
18 for lack of knowledge, and specifically denies the last sentence.

19 14. Answering Paragraph 14 of the ODC's Amended Complaint, Respondent denies
20 for lack of knowledge.

21 15. Answering Paragraph 15 of the ODC's Amended Complaint, Respondent denies
22 for lack of knowledge. The Court's docket will speak for itself.
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1 16. Answering Paragraph 16 of the ODC's Amended Complaint, Respondent admits
2 he sought admission *pro hac vice* with George Best, except uncertain as to date. Petition speaks
3 for itself.

4 17. Answering Paragraph 17 of the ODC's Amended Complaint, the Court's docket
5 speaks for itself on the date the Second Amended Complaint was filed. The second sentence of
6 Paragraph 17 is a legal conclusion. The chronology is wrong. Glacier Construction Partners
7 ("GCP") Answer, contents and date thereof will speak for itself. Respondent's first tender to
8 James River, on behalf of GCP, was made about one year before Respondent's participation.
9 Respondent's second tender to James River on behalf of GCP was made about six months before
10 GCP's answer. The record will reflect when the Order allowing amendment was filed, and when
11 the Second Amended Complaint was filed. GCP tendered to James River in late September,
12 2011. GCP did not answer Second Amended Complaint until March, 2012. GCP admitted the
13 outcome of the *IMI v. GCP* arbitration. Deny balance.

14 18. Answering Paragraph 18 of the ODC's Amended Complaint, Respondent denies.
15 Separate appearances were made. The cases concluded at different times. Respondent is no
16 longer counsel of record in any of the listed Court cases. All other allegations of Paragraph 18
17 are denied.

18 19. Answering Paragraph 19 of the ODC's Amended Complaint, Respondent
19 prosecuted a pass-through claim from A/L to GCP subs. Deny balance.

20 20. Answering Paragraph 20 of the ODC's Amended Complaint, Respondent denies
21 he "realigned the pleadings in the Flathead County case to make his client a defendant." The
22 second sentence may appear in some email, but without context, it is meaningless. Admit that
23 Respondent was of the opinion there was a very large damage to A/L for which GCP subs,
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1 GCP's sub's insurers, and GCP's insurers had indemnity obligations and the latter also had
2 defense obligations. All other allegations in Paragraph 20 are denied.

3 21. Answering Paragraph 21 of the ODC's Amended Complaint, Respondent admits
4 he assisted A/L, the pass-through claim plaintiff, in locating counsel. The balance of that
5 paragraph is denied.

6 22. Answering Paragraph 22 of ODC's Amended Complaint, Respondent denies.

7 23. Answering Paragraph 23 of ODC's Amended Complaint, Respondent admits
8 A/L's General Contract with GCP requires A/L to pay GCP's fees incurred in lawsuits with subs,
9 suppliers and insurers on the project. Balance denied.
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11 24. Answering Paragraph 24 of ODC's Amended Complaint, Respondent denies.

12 25. Answering Paragraph 25 of ODC's Amended Complaint, Terry Trieweiler made a
13 demand upon GCP based upon Paul Pederson's claim calculations, and only later opined it was
14 too high. Admit Paul Pederson, acting on behalf of A/L, during Terry Trieweiler's tenure as A/L
15 lawyer, calculated A/L's damages arising out of breaches of GCP's subs. Balance denied.

16 26. Answering Paragraph 26 of ODC's Amended Complaint, Respondent admits he
17 emailed Don Abbey an email containing, in part, those words. Respondent sought to have GCP
18 confess to judgment, assign claims and get out of the case in exchange for a covenant not to
19 execute. Terry Trieweiler refused that. Abbey fired Terry Trieweiler. Balance denied.
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21 27. Answering Paragraph 27 of ODC's Amended Complaint, Respondent admits that
22 a settlement was entered in April/May, 2013. Deny A/L released GCP. Admit A/L and GCP
23 waived conflicts. Respondent denies Abbey/Land released GCP. Respondent admits waiver.
24 Balance denied.
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1 28. Answering Paragraph 28 of ODC's Amended Complaint, Respondent admits a
2 fee agreement was entered. Respondent denies the terms are as stated.

3 29. Answering Paragraph 29 of ODC's Amended Complaint, Respondent has no
4 knowledge of the source of this amendment, and denies for lack of knowledge.

5 30. Answering Paragraph 30 of ODC's Amended Complaint, Respondent admits.
6 The Judgment will speak for itself.

7 31. Answering Paragraph 31 of ODC's Amended Complaint, Respondent admits he
8 sent a settlement proposal, which was later amended to withdraw the offending portion. Balance
9 denied.

10 32. Answering Paragraph 32 of ODC's Amended Complaint, Respondent states that
11 the docket and Order will speak for themselves. Respondent denies there was a conflict.
12 Balance denied.

13 33. Answering Paragraph 33 of ODC's Amended Complaint, Respondent is
14 Cushman. A request for reconsideration was filed. The Order speaks for itself. Respondent
15 denies the quoted portion in Paragraph 33 as it does not correctly recite the facts.

16 34. Answering Paragraph 34 of ODC's Amended Complaint, Respondent admits that
17 Judge Eddy referred Respondent to ODC, and further states that Respondent was not informed of
18 that referral until months later. Denies allegations in exhibits.

19 35. Answering Paragraph 35 of ODC's Amended Complaint, Respondent states that
20 Judge Eddy's Order will speak for itself. Respondent denies that the Findings or Conclusions are
21 correct. The balance of Paragraph 35 is denied.
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- 1 3. Respondent abided by all rules of professional conduct.
- 2 4. Respondent proceeded in compliance with the law.
- 3 5. License.
- 4 6. Statute of limitations.
- 5 7. Waiver.
- 6 8. Absence of necessary parties.
- 7 9. Violation of due process.
- 8 10. Malice.
- 9 11. Fraud.
- 10 12. Illegality.

11 WHEREFORE, the Respondent prays:

- 12 1. That this Amended Complaint be dismissed, with prejudice, as infirm in fact or at
13 law;
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- 15 2. That if this matter is not dismissed before hearing, that a formal hearing be had
16 before an adjudicatory panel of the Commission;
- 17 3. That, after a formal hearing, any report of findings and recommendations of the
18 adjudicatory panel of the Commission, in which the adjudicatory panel finds the facts warrant
19 disciplinary action and recommends discipline, those findings and recommendations be reviewed
20 by the Montana Supreme Court;
- 21 4. Respondent be awarded costs and expenses in defending this matter; and
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true copy of the foregoing document was served upon the following individuals by the means designated below:

<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail	Michael W. Cotter Chief Disciplinary Counsel P.O. Box 1099 Helena, MT 59624-1099 mwcotter@montanaodc.org msowell@montanaodc.org
<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail	Commission on Practice Montana Supreme Court P.O. Box 203005 Helena, MT 59621

Dated this 16 day of May, 2018.

