

03/26/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 17-0476

JAN 03 2019

Clerk of the Supreme Court
State of Montana
300 North Broadway
Helena, MT 59601

1 GEORGE B. BEST
2 P.O. Box 278
3 Kalispell, MT 59903
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9 Respondent, *Pro Se*

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

10 IN THE MATTER OF GEORGE B. BEST,
11 A Resigned Attorney,
12 Respondent.

) Supreme Court Case No. PR 17-0476

) ODC File No. 15-111

) **CONDITIONAL ADMISSION AND
AFFIDAVIT OF CONSENT**

14 STATE OF MONTANA)
15 : ss.
16 COUNTY OF FLATHEAD)

17 I, George B. Best, being first duly sworn upon oath deposes and affirms as follows.

18 1. I am the Respondent. I tender my conditional admission and make this affidavit of
19 consent pursuant to Rule 26, Montana Rules for Lawyer Disciplinary Enforcement (2018), in
20 exchange for the stated forms of discipline.

21 2. I was an active lawyer at the time the formal complaint and amended formal
22 complaint were filed against me, alleging ethical misconduct. I am informed and aware of the
23 allegations against me and understand that, if those allegations are proved by clear and convincing
24 evidence, there exist grounds for discipline against me.
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1 3. I present this affidavit of consent and my tendered admission to an Adjudicatory
2 Panel of the Commission on Practice in exchange for the forms of discipline described below. If
3 the Commission on Practice approves my tendered admission, I acknowledge my tendered
4 admission is subject to acceptance or rejection by the Montana Supreme Court. If my conditional
5 admission is rejected by either the Commission on Practice or the Supreme Court, then I
6 understand my admission shall be deemed withdrawn and cannot be used against me in this or any
7 subsequent proceeding.

8 4. My consent to discipline is freely and voluntarily tendered. I am not subject to
9 coercion or duress of any kind. I am fully aware of the implications of submitting my conditional
10 admission and affidavit of consent.

11 5. I admit to the following facts relevant to ODC's Complaint and Amended
12 Complaint:

- 13 a. I was admitted to practice law in Montana in 1974. I voluntarily moved from
14 "Active" to "Resigned" status effective June 1, 2018.
- 15 b. In 2001, Donald Abbey ("Abbey"), a real estate developer from Southern
16 California, purchased Shelter Island on Flathead Lake to build a personal
17 residence. Mr. Abbey bought the island through Abbey/Land, LLC
18 ("Abbey/Land"), a corporation wholly owned by him. After disputes arose with
19 the original general contractor, Abbey formed GCP to act as general contractor;
20 he was the sole owner of GCP. Both Abbey/Land and GCP are Montana LLCs.
- 21 c. GCP entered a \$1.4 million contract with Interstate Mechanical, Inc. ("IMI")
22 for the design and installation of the plumbing and heating-cooling system
23 (HVAC) for the house. Subsequent change orders increased the value of that
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1 contract by approximately \$1 million. The General Contract included a
2 mandatory arbitration clause (§3.4), which limited the prevailing party's
3 recovery by excluding consequential, punitive or other damages beyond the
4 prevailing party's actual damages. In 2009, disputes arose between IMI and
5 GCP and other sub-contractors and insurers.

- 6 d. Prior to my involvement, and as a result of these disputes, multiple lawsuits
7 were initiated in state and federal courts between 2009 and 2011, and arbitration
8 was also conducted and concluded.¹

9
10 ¹ The proceedings are as follows:

- 11 > Prior to my involvement, July 17, 2009: *Interstate Mechanical, Inc. v. Glacier*
12 *Construction Partners, American Arbitration Association*, Case No. 77 110 Y 00286 09
13 JISI, (hereinafter "*IMI v. GCP Arbitration*"), dealing with the GCP/IMI contract
14 payment.
- 15 > Prior to my involvement, September 23, 2009: currently styled, *Abbey/Land (Plaintiff) v.*
16 *GCP (Defendant), James River Insurance Co. (Intervenor), et al.*, Flathead County District
17 Court, Cause No. DV-09-1198(A) (hereinafter "the Flathead County case") concerning
18 consequential damages to Abbey/Land's property, loss of use, restoration and other
19 damages due to septic, electrical, heat pumps, and other plumbing/HVAC system failures,
20 and raising claims for punitive damages.
- 21 > Prior to my involvement, April 15, 2010: *Interstate Mechanical, Inc. v. Glacier*
22 *Construction Partners, LLC*, U.S. District Court, Dist. of Mont., Missoula Division,
23 Case No. CV-10-36-M-DWM (hereinafter "*IMI v. GCP Montana federal district court*
24 *case*"), initially seeking stay of *Abbey/Land v. IMI* and then re-opened later to confirm
25 the *IMI v. GCP* arbitration award.
- > Prior to my involvement, December 8, 2010: *Charter Oak Fire Insurance Company,*
Travelers Property Casualty Company of America, The Travelers Indemnity Company
v. Interstate Mechanical, Inc., Continental Western Insurance Company, Glacier
Construction Partners, LLC, Roger Lemons, Steven Tygart, U.S. District Court, Dist.
of Oregon, Case No. 3:10-cv-01505-PK (hereinafter "*Charter Oak v. IMI Oregon*
federal district court case"). This case began solely as a declaratory judgment action
by the insurance companies against IMI and CWIC. In mid-2011, after the *IMI v. GCP*
arbitration decision, the complaint was amended to add GCP as a defendant.
- > September 29, 2011: *GCP v. IMI*, Lake County District Court, Cause No. DV-11-276
(hereinafter "the Lake County case"). This case began as a declaratory judgment action
filed by John Mercer on behalf of GCP to determine the various GCP, IMI, Abbey/Land,
and subcontractors' insurers' defense and indemnity obligations under various insurance

- 1 e. Prior to my involvement, on September 23, 2009, in Flathead County District
2 Court, Abbey/Land and GCP, as co-plaintiffs, filed a lawsuit against multiple
3 defendants, including IMI. The matter was styled: *Abbey/Land LLC and*
4 *Glacier Construction Partners, LLC v. Interstate Mechanical, Inc. et al.*
5 Federal District Court Judge Donald Molloy compelled GCP and IMI to
6 arbitrate their payment disputes and stayed the Flathead County case by Order
7 entered May 12, 2010, pending arbitration in Missoula Montana.
- 8 f. Prior to my involvement, in the *IMI v. GCP* Arbitration, IMI sued GCP for
9 breach of contract, violation of the Montana Prompt Payment Act, negligence
10 and other claims; and GCP made affirmative claims against IMI for damages.
11 The Arbitrator awarded damages to GCP in the amount of \$497,549.11 on its
12 affirmative claims and \$83,525.00 to IMI, resulting in a net award to GCP in
13 the sum of \$414,021.11. Among other things, the Arbitrator found that GCP
14 “was in complete control of the construction project...when the HVAC system
15 caused an air handler to freeze, resulting in broken water pipes...” which
16 flooded the Main House.
- 17 g. Prior to my involvement, on March 1, 2011, U.S. District Judge Donald Molloy
18 issued an Order affirming the *IMI v. GCP* arbitration award.
- 19 h. Prior to my involvement, on April 8, 2011, following the Arbitrator’s Award
20 and Judge Molloy’s Order affirming that award, GCP dismissed its claims in
21 the Flathead County case against all defendants without prejudice. After GCP
22 dismissed its claims in the lawsuit, Abbey/Land petitioned the court to allow it
23 to have GCP added as a defendant. That motion was granted in August 2011.
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contracts.

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- i. I began representing GCP in the Flathead County case from as early as September 27, 2011 to August 20, 2012; and, again, in May 2013, while I was also representing Abbey/Land. I withdrew from representing Abbey/Land in December 2016 and was disqualified from representing GCP by court order on March 1, 2017. In the Lake County case, I began representing GCP and Abbey/Land in May 2013 until I withdrew in November 2017.
 - j. On September 1, 2011, Cushman petitioned the State Bar of Montana for admission to appear *pro hac vice* in the Flathead County case on behalf of his client, GCP. Cushman advised I would appear as counsel of record, Cushman would appear as co-counsel, and further, that I would sponsor Cushman.
 - k. On September 23, 2011, Abbey/Land filed its Second Amended Complaint, adding GCP as a party defendant, making their interests adverse. Thus, in the Flathead County Case, the parties were realigned with the caption styled: *Abbey/Land, LLC v. Glacier Construction Partners, LLC v. IMI*. In this newly amended complaint, Abbey/Land sought the consequential and punitive damages from all the defendants, including GCP, that had been precluded under the arbitration clause, which had been deleted prior to my involvement and without my knowledge.
 - l. On May 7, 2012, on behalf of GCP, co-counsel, Cushman, and I answered Abbey/Land's Second Amended Complaint admitting the allegations of the newly amended complaint while making counterclaims against the subcontractors and insurers. GCP did not contest the claims for consequential

1 and punitive damages. Representing GCP, co-counsel Cushman then tendered
2 Abbey/Land's claims to James River Insurance Company ("James River"),
3 which refused to defend or indemnify.

4 m. Cushman controlled GCP's defense while actively dictating to Abbey/Land to
5 develop and assert its claims against his own client, GCP.

6 n. I knew in April 2013 GCP and Abbey/Land intended to settle the Flathead
7 County case. I knew the documents were signed by Abbey in early May,
8 settling the matter. As part of the settlement, GCP was required to confess
9 judgement in the amount of \$12 million in favor of Abbey/Land.

10 Abbey/Land released all its claims against GCP. At the same time, Donald
11 Abbey waived any conflict, on behalf of himself, GCP, and Abbey/Land.

12 After my dismissal, the Flathead County District Court ruled Donald Abbey
13 could not waive the conflict; the conflict was not waivable.

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15 o. Even though I represented GCP, earlier in the litigation, on May 6, 2013,
16 Abbey/Land officially retained my firm and Cushman's law firm on a
17 contingency basis. Cushman was to represent it in the Oregon, Flathead County
18 and Lake County matters, and I was to represent it in the Flathead County and
19 Lake County matters. Abbey/Land agreed to pay me 2% of the 50% net amount
20 payable to Cushman, recovered by GCP, Abbey/Land or Donald Abbey in any
21 of those matters.

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23 p. On March 17, 2014, Judge David Ortley, then presiding in the Flathead County
24 case, entered judgment in favor of Abbey/Land and against GCP in the sum of
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1 \$12 million, pursuant to a form of judgment tendered by myself and Cushman.

2 Judge Ortley later retired, and the case was reassigned to Judge Amy Eddy.

3 q. James River challenged the confessed judgment and appealed to the Montana
4 Supreme Court. On March 10, 2015, the Montana Supreme Court issued its
5 decision in Abbey/Land, reversing the \$12 million judgment in favor of
6 Abbey/Land and against GCP and remanded the matter to District Court,
7 directing the court to enter an order allowing James River to intervene and raise
8 the issue of the reasonableness of the confessed judgment.

9 r. On March 1, 2017, in the Flathead County case, Judge Amy Eddy issued an
10 oral Order granting James River Insurance Company's *Combined Motions to*
11 *Revoke Pro Hac Vice Admission of Jon E. Cushman and Disqualify Counsel*
12 *(myself) and Motion for Injunction Prohibiting Continued Representation*. This
13 was followed by a written Order dated April 14, 2017.

14 s. Cushman and I filed a request for reconsideration of the disqualification order.
15 This request was denied by the Court on April 14, 2017.

16 t. On April 14, 2017, Judge Eddy referred me to ODC for investigation of
17 violation of Rule 1.7 of the Montana Rules of Professional Conduct.

18 u. By my conduct as outlined above, and despite obtaining a Waiver of Conflict
19 of Interest in the Flathead County matters, the conflict was not waivable, and
20 my dual representation of Abbey/Land and GCP, constitutes a concurrent
21 conflict of interest in violation of Rule 1.7(a)(1).
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1 v. I never prepared any pleadings on behalf of Abbey/Land or GCP, and relied
2 exclusively on co-counsel Cushman to do so, thereby abdicating independent
3 professional judgment in violation of Rule 2.1, MRPC.

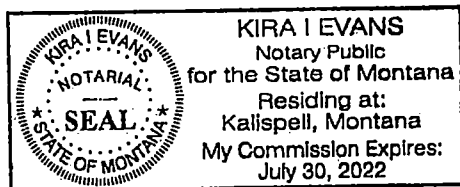
4 6. I tender my admission in exchange for the following forms of discipline:

- 5 a. I agree to maintain my "Resigned" status for a minimum of 5 years
6 from the date of Order of Discipline;
7 b. Pay the costs of the disciplinary proceedings.

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9 DATED this 3rd day of January, 2019.
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12 By: George B Best
13 George B. Best, Respondent

14 SUBSCRIBED AND SWORN TO before me this 3rd day of January, 2019.
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(Notarial Seal)

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Kira I. Evans
Notary Public for the State of Montana