

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 14

WCC No. 2004-1069

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CHRIS AKKERMAN

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

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ORDER DIRECTING PETITIONER TO APPEAR FOR DEPOSITION;  
TO SHOW CAUSE WHY HE SHOULD NOT BE ORDERED TO PAY  
EXPENSES FOR FAILED DEPOSITION; AND  
VACATING TRIAL

**Summary:** Petitioner, who is representing himself, failed to keep the Court and respondent's counsel informed of his whereabouts and mailing address and failed to appear for an agreed upon deposition.

**Held:** Parties representing themselves must keep the Court and other parties informed at all times of their mailing addresses. In light of petitioner's failure to do so in this case and his failure to appear at his deposition, he is ordered to provide his address to the Court, to appear and show cause why he should not be assessed for the respondent's expenses for his failed deposition, and to appear and be deposed.

**Topics:**

**Procedure: Service.** A party representing himself or herself must at all times keep the Court and other parties informed of their mailing address so that he or she can be served with documents pertaining to the case. Failure to do so may result in dismissal of his or her petition or other appropriate relief.

**Procedure: Pro Se.** A party representing himself or herself must at all times keep the Court and other parties informed of their mailing address so that he

or she can be served with documents pertaining to the case. Failure to do so may result in dismissal of his or her petition or other appropriate relief.

¶1 The petitioner in this case represents himself. At the time he filed his petition, he provided a Cut Bank, Montana address for service of papers and documents. Subsequently, he left the State of Montana and left no forwarding address. (December 15, 2004 File Memorandum of Clara Wilson, Deputy Clerk of Court.)

¶2 On December 15, 2004, following a failed attempt by respondent, Montana State Fund (State Fund), to serve a deposition notice on him, petitioner informed Court staff by telephone that he planned to return to Montana in late January or early February 2005, and would contact State Fund's counsel with his new address when he did return. (*Id.*) He said that meanwhile mail should be addressed to him at General Delivery, Great Falls, MT 59401. (*Id.*) He also provided his grandparents' phone number as a number where messages could be left for him. Based on that information, a new scheduling order issued, resetting the matter for trial during the week of March 28, 2005.

¶3 During the week of February 14, 2005, petitioner telephoned the State Fund's attorney, Mr. Thomas E. Martello, and informed him that he had returned to Montana and was available for a deposition in Billings. (Affidavit of Thomas E. Martello.) He left a phone number to contact him when the time and place of the deposition was set. (*Id.*)

¶4 Between February 14, 2005 and February 23, 2004, Ms. Barb King, a legal assistant to Mr. Martello, attempted to telephone the petitioner on numerous occasions at the number he left. (Affidavit of Barb King.) The purpose of the calls was to inform the petitioner that his deposition had been set for February 25, 2005, in Billings. (*Id.*) Ms. King failed to reach the petitioner. However, the phone was answered on at least one occasion by a woman, and Ms. King informed her of the details of the deposition. (*Id.*) Finally, on February 24, 2005, she was able to speak with the petitioner and informed him of the scheduled deposition and he replied that he would be there. (*Id.*)

¶5 On February 25, 2005, Mr. Martello traveled from Helena to Billings for the deposition. (Affidavit of Thomas Martello.) Petitioner failed to appear. (*Id.*) Mr. Martello and the State Fund incurred a \$150 appearance fee for the court reporter, as well as unspecified travel and lodging expenses. (Brief in Support of Motion to Vacate Trial Setting and for Deposition Setting of Petitioner, with attachment.)

¶6 On March 2, 2005, Clara Wilson, this Court's Pretrial Hearing Examiner, had a conference call with petitioner and Mr. Martello. (Court File Memoranda of March 2, 2005.) Mr. Martello indicated his intent to file a motion to vacate the March 28, 2005 trial setting. (*Id.*) Petitioner agreed to provide a FAX number to Mr. Martello so he could FAX the

motion to petitioner. (*Id.*) Petitioner further agreed to a further telephone conference to take place on March 4, 2005, to discuss a new trial date. (*Id.*)

¶7 On March 3, 2005, Mr. Martello filed a Motion to Vacate Trial Setting and for Deposition Setting of Petitioner and an accompanying brief.

¶8 The March 4, 2005 telephone conference never took place. Ms. Wilson attempted to contact the petitioner at a Montana telephone number left by petitioner, and also at his cell phone number. (Court File Memorandum of March 23, 2005.) She talked to a woman who indicated she did not know when she would see the petitioner. (*Id.*) Ms. Wilson also left a message on petitioner's cell phone asking him to call her; he has not done so. (*Id.*)

¶9 On March 4, 2005, the Court received and filed the State Fund's Motion to Vacate Trial Setting and for Deposition Setting of Petitioner, along with its brief and supporting affidavits. The certificate of service reflects that they were mailed to the petitioner at his address of record in this case, which is in Cut Bank.

¶10 When a party who represents himself or herself moves or changes addresses, that party must provide the Court and other parties promptly with his or her new address. He or she must also comply with all orders of the Court, including pretrial deadlines. He or she must also timely respond to discovery requests. In light of the apparent failure of the petitioner in this case to comply with these requirements,

¶11 IT IS HEREBY ORDERED that by April 1, 2005, the petitioner shall notify the Court and Mr. Martello of the current address where he resides and of his current mailing address, and that hereinafter he shall keep the Court and Mr. Martello informed at all times of any change in his residence and/or mailing addresses.

¶12 IT IS FURTHER ORDERED that the petitioner shall personally appear before the Court at 1625 11<sup>th</sup> Avenue, Helena, Montana, at 1:00 p.m., April 14, 2005, and show cause why he should not be compelled to reimburse the Montana State Fund for the expenses it incurred in connection with its appearance at his scheduled deposition on February 25, 2005.

¶13 IT IS FURTHER ORDERED that immediately following the show cause hearing scheduled above, the petitioner shall submit to a deposition and under oath answer questions propounded to him by the State Fund. The deposition shall take place in the Courtroom of the Workers' Compensation Court.

¶14 This Order is being sent to the petitioner at his Cut Bank address and to General Delivery, Great Falls, Montana. Court staff shall also telephone the petitioner at the

numbers he has previously provided to inform him of this Order and request an address or FAX number to which this Order may be sent if the mailing to the other addresses fails.

¶15 IN THE EVENT THE COURT IS UNABLE TO EFFECT SERVICE OF THIS ORDER ON THE PETITIONER, THE PETITION WILL BE DISMISSED WITHOUT PREJUDICE. IN THE EVENT SERVICE OR NOTICE IS EFFECTED AND THE PETITIONER FAILS TO APPEAR AS REQUIRED, THE PETITION MAY BE DISMISSED WITH PREJUDICE.

DATED in Helena, Montana, this 23rd day of March, 2005.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Chris Akkerman (via Regular and Certified Mail at both addresses )  
Mr. Thomas E. Martello  
Submitted: March 22, 2005