

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 39

WCC No. 2007-1955

MONTANA STATE FUND

Petitioner/Insurer

vs.

RANDALL SIMMS

Claimant/Respondent.

ORDER GRANTING PETITIONER'S MOTION FOR SANCTIONS

Summary: Petitioner moved for sanctions against Respondent's former counsel Geoffrey C. Angel pursuant to §§ 39-71-2901, -2914, MCA, after Angel entered a Notice of Conflict and Motion to Withdraw from his representation days before multiple depositions were scheduled to be taken. In his Notice of Conflict and Motion to Withdraw, Angel alleged that "newly discovered information" led him to recognize a potential conflict in the matter which necessitated his withdrawal from the case. In his response to Petitioner's motion for sanctions, however, Angel asserted that it was actually the denial of his motion to dismiss and the failure of mediation to resolve the case that led him to conclude he should withdraw his representation. Finally, at a hearing on these issues ordered by the Court, Angel claimed that he had recognized the potential conflict from the time the Petition for Declaratory Ruling was filed, but that what actually triggered his motion to withdraw was learning that Petitioner was contacting witnesses for a potential criminal fraud investigation. Angel asserted that he did not provide this as a basis for withdrawing in any of his previous pleadings because he believed it might be privileged information.

Held: Angel violated § 39-71-2914, MCA, causing unnecessary delay and needless expense on Petitioner's part. Not only did Angel fail to withdraw promptly when it became evident that withdrawal would be necessary, but he also continued to take action in this case which caused Petitioner to expend time and money for depositions which then had to be cancelled because of his withdrawal. Sanctions are ordered.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2914. Respondent's attorney violated § 39-71-2914, MCA, when he pursued the case, demanded the Court's time, and required parties to submit to depositions and produce discovery when he knew that he had a conflict of interest and would be forced to withdraw as counsel. Counsel further misrepresented his reasons for withdrawing his representation when he pled that it was based on "newly discovered evidence" when he later admitted that he knew of the potential conflict of interest at the outset of the case and chose to remain counsel because he thought he could get the matter dismissed. While I agree withdrawing his representation based on the potential conflict was a judgment call, counsel continued to pursue the case for several weeks after I denied the motion to dismiss, causing Petitioner, Petitioner's counsel and this Court to expend time and resources needlessly.

Attorneys: Sanctions. Petitioner is entitled to a \$300 sanction from Respondent's counsel where counsel pursued the case, demanded the Court's time, and required parties to submit to depositions and produce discovery when he knew that he had a conflict of interest and would be forced to withdraw as counsel. Counsel further misrepresented his reasons for withdrawing his representation when he pled that it was based on "newly discovered evidence" when he later admitted that he knew of the potential conflict of interest at the outset of the case and chose to remain counsel because he thought he could get the matter dismissed. While I agree withdrawing his representation based on the potential conflict was a judgment call, counsel continued to pursue the case for several weeks after I denied the motion to dismiss, causing Petitioner, Petitioner's counsel and this Court to expend time and resources needlessly and a sanction is thereby warranted.

Sanctions. Respondent's attorney violated § 39-71-2914, MCA, when he pursued the case, demanded the Court's time, and required parties to submit to depositions and produce discovery when he knew that he had a conflict of interest and would be forced to withdraw as counsel. Counsel further misrepresented his reasons for withdrawing his representation when he pled that it was based on "newly discovered evidence" when he later admitted that he knew of the potential conflict of interest at the outset of the case and chose to remain counsel because he thought he could get the matter dismissed. While I agree withdrawing his representation based on the potential conflict was a judgment call, counsel continued to pursue the case

for several weeks after I denied the motion to dismiss, causing Petitioner, Petitioner's counsel and this Court to expend time and resources needlessly. A sanction paid to Petitioner by Respondent's counsel, with the cost not to be passed on to Respondent himself, is ordered.

¶ 1 Geoffrey C. Angel, former counsel for Claimant and Respondent Randall Simms, filed a Notice of Conflict and Motion to Withdraw with this Court on February 1, 2008.¹ Petitioner Montana State Fund moved for sanctions against Angel on the same date, noting that Angel's notice and motion caused the cancellation of depositions costing Petitioner and this Court time and money. Petitioner alleged that the basis for Angel's conflict and need to withdraw from representation existed when the Petition for Declaratory Ruling in this matter was filed in September 2007, and that Angel's delay in withdrawing caused unnecessary delay and costs to the litigation.²

¶ 2 A hearing on this matter was held at the Court's request on March 20, 2008.³ At the hearing, Angel argued that while he recognized the conflict existed from the time he received the Petition in September 2007, he believed there was a significant chance that the Petition would be dismissed, and so he stayed on as counsel because of the difficulty and expense Simms would otherwise have to face in finding new counsel. When Angel's motion to dismiss was denied,⁴ he moved to withdraw.

¶ 3 In response to questioning by the Court, Angel stated that the "newly discovered information" that he cited as grounds for his motion to withdraw was his belief that Petitioner was actively working on the State's criminal investigation of his client and had contacted some of his client's family members as part of that investigation. Angel weighed the possibility that he might be called as a witness in the criminal case and decided that he needed to withdraw as counsel. Angel stated that he did not reference this information in his brief in support of his motion to withdraw because he believed it might constitute attorney work product. However, since the Court had now asked what the nature of the "newly discovered information" was, Angel stated he was willing to provide it. Angel further clarified that the reasons he decided he needed to withdraw from the case included the denial of his motion to dismiss, the ongoing criminal investigation, and the fact that this criminal investigation included someone questioning Respondent's family members. Angel asserted that he had fully intended to take the depositions which were scheduled for the

¹ Docket Item No. 23.

² Motion for Sanctions or Other Appropriate Relief, Docket Item No. 24.

³ Minute Book Hearing No. 3924, Docket Item No. 34.

⁴ See 2008 MTWCC 3, Docket Item No. 14.

following week at the time he filed his motion to withdraw. However, once he learned that Petitioner had contacted witnesses, he filed his motion.

¶ 4 Angel's potential conflict in this case was present at the outset, given that the Petition sought not only the return of the benefits but also the attorney fees Angel received. Moreover, Angel acknowledged that he recognized the potential conflict from the outset. Nonetheless, Angel made a judgment call that he could continue representing Respondent in this matter if he was successful in either resolving the matter at mediation or getting the Petition dismissed. I agree that this was a judgment call and I take no exception to it. However, I do take exception to the fact that after the matter failed to resolve at mediation and after I denied Respondent's motion to dismiss,⁵ Angel did not withdraw at that point, even though the potential conflict had now manifested into an actual conflict.

¶ 5 After the conflict had come to fruition, Angel did not merely take some time to consider his options and weigh how best to mitigate any prejudice to his client that may result from his withdrawal. Rather, he actively continued to pursue the case, to demand the Court's time, and to require various parties to submit to depositions and produce discovery. Angel not only failed to immediately move to withdraw, he continued taking action in this case which caused expenditures of time and resources on the parts of Petitioner, Petitioner's counsel, and this Court. After I denied Respondent's motion to dismiss on January 9, 2008, Angel contacted the Court on January 22 and 23, 2008, requesting that the Court block out time to travel to Bozeman to attend depositions in this case. Angel further arranged with Court staff to schedule depositions in the Helena workers' compensation courtroom and to block out time so that the courtroom would be available for his depositions. On January 24, 2008, Angel also filed with the Court three notices of deposition and subpoena duces tecums.⁶ All of these actions were taken by Angel **after** I denied Respondent's motion to dismiss which Angel represented in his opposition to Petitioner's motion for sanctions as the final event that necessitated his withdrawal.

¶ 6 Section 39-71-2914, MCA, states in pertinent part:

(1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. . . .

. . .

⁵ *Montana State Fund v. Simms*, 2008 MTWCC 3.

⁶ Docket Item Nos. 17-19.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact; [and]

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

¶ 7 As stated above, while I agree that Angel made a judgment call when he delayed withdrawing from his representation of Respondent until after he lost his motion to dismiss, Angel's subsequent pursuit of depositions and scheduling both Petitioner's counsels' and the Court's time while he was fully aware that he needed to withdraw his representation, unnecessarily delayed the litigation and caused needless expense on Petitioner's part in preparing for depositions which Angel knew would have to be rescheduled. Furthermore, Angel misrepresented his reasons for withdrawing his representation of Respondent when he pled that it was based on "newly discovered information" when it actually was based upon his loss of the motion to dismiss and the failure of the case to settle during mediation. As for Angel's allegation that it was his learning of a potential criminal investigation of Respondent that actually triggered his conflict and the need for him to withdraw, I do not find the explanation credible. It was not until the hearing which was initiated by order of the Court that this explanation first surfaced. Angel made no mention of it in either his motion to withdraw nor in his response to Petitioner's motion for sanctions. Had the Court not ordered a hearing in this matter, Angel's explanation would have never been offered. Throughout this process, Angel's explanations for his conduct continually changed. I therefore find it difficult to give credence to any of them.

¶ 8 For these reasons, I conclude Angel violated § 39-71-2914, MCA, and sanctions are appropriately awarded to Petitioner for its time and expense. Although it is clear that some financial costs were incurred from the scheduling and then canceling of the multiple depositions which Angel noticed up and which then had to be canceled, Petitioner stated at the hearing that it had not quantified a specific dollar amount for the time that was expended because Petitioner was not seeking a specific penalty. Petitioner also clarified that it did not bring this motion with the intent to detrimentally affect Respondent himself. I agree with this latter sentiment. From everything that has been presented to me, it does

not appear as though Respondent played any role in the conduct for which sanctions are ordered other than relying on and following his attorney's advice. However, even though Petitioner is not seeking a specific sanction, I believe Angel's conduct – as detailed above – calls for something more than a "slap on the wrist." In the absence of a request for a specific amount, I find that \$300, payable to Petitioner, is an appropriate sanction for Angel's conduct.

ORDER

¶ 9 Mr. Angel is ordered to pay \$300 to Petitioner as a sanction pursuant to § 39-71-2914, MCA. This sanction shall be paid by Mr. Angel personally, and shall not be passed on to Respondent.

¶ 10 Payment of this sanction shall be made within thirty days from the date of this Order. Mr. Angel shall notify the Court within that time that payment has been made.

DATED in Helena, Montana, this 4th day of August, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Thomas E. Martello
Bradley J. Luck
Geoffrey C. Angel
Gene R. Jarussi
Michael G. Eiselein
Lawrence A. Anderson
Submitted: March 20, 2008