

SUPREME COURT OF MONTANA

Matter of Sisler

Matter of Sisler · No. No. 00-125 · Decided June 19, 2001

SUMMARY

The Montana Supreme Court reviewed objections to findings and recommendations of the Commission on Practice concerning attorney Matthew J. Sisler. The Court adopted findings that Sisler violated Rules 4.2 and 8.4 of the Montana Rules of Professional Conduct, struck certain irrelevant or uncharged testimony, and imposed an indefinite suspension of at least three months, effective July 14, 2001. The Court also assessed proceeding costs of \$4,535.83 and ordered compliance with client-notification requirements.

CASE DETAILS

COURT	Supreme Court of Montana
JURISDICTION	Montana
DECIDED	June 19, 2001
DOCKET	No. 00-125
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Commission on Practice issued findings of fact, conclusions of law, and recommendations, and the respondent attorney filed objections with the Montana Supreme Court.
STANDARD OF REVIEW	De novo review of the Commission on Practice's findings and conclusions.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Matthew J. Sisler

TOPICS

- appellate procedure
- standard of review
- civil procedure
- divorce

PRACTICE AREAS

- legal ethics and professional responsibility
- attorney discipline
- appellate procedure
- family law

QUESTIONS PRESENTED

1. Whether the Commission on Practice's findings were supported by clear and convincing evidence.
2. Whether an attorney remains attorney of record until a court issues an order permitting withdrawal.
3. Whether the disciplinary proceeding denied Sisler due process because he was not given advance notice of witnesses and exhibits.
4. Whether Montana Rules of Civil Procedure 52(b) and 59(a) apply to proceedings before the Commission on Practice.
5. Whether evidence concerning uncharged conduct and generalized character testimony exceeded the scope of the disciplinary complaint.
6. Whether Sisler violated Rules 4.2 and 8.4 of the Rules of Professional Conduct.

HOLDINGS

1. The Montana Supreme Court reviews objections to findings of the Commission on Practice de novo.
2. An attorney remains attorney of record until the court issues an order allowing the attorney to withdraw.
3. A party is not denied due process by the absence of advance notice of witnesses and exhibits when the disciplinary rules provide discovery opportunities and the party elects not to use them.
4. Rules 52(b) and 59(a), M.R.Civ.P., do not apply to proceedings before the Commission on Practice.
5. Evidence concerning conduct outside the events narrowly framed by the complaint, and irrelevant generalized character testimony, must be stricken from the disciplinary findings.
6. Sisler violated Rule 4.2 by communicating with Bennett about the domestic proceeding while she remained represented by Carter, and violated Rule 8.4 by misrepresenting to the county attorney's office that Bennett had dropped the divorce.

KEY QUOTATIONS

“The fact that a party chooses not to avail himself of the benefits of prehearing discovery opportunities does not mean that he has been denied due process of law.”

“The COP was correct in concluding that an attorney remains the attorney of record until such time as the Court issues an order allowing the attorney to withdraw.”

FACTUAL BACKGROUND

Sisler communicated with Julia Bennett concerning the subject matter of her divorce proceeding while knowing that she was represented by attorney Adele Carter. Sisler also told the Sanders County Attorney's Office that Bennett had dropped the divorce, although the divorce remained pending. The Commission on Practice found by clear and convincing evidence that Sisler's conduct violated the Rules of Professional Conduct.

PROCEDURAL HISTORY

The Commission on Practice issued its findings, conclusions, and recommendations on January 30, 2001, in connection with disciplinary charges against Sisler. Sisler objected to the findings and conclusions, including the

sufficiency of the evidence, evidentiary rulings, discovery, and denial of a request to supplement the record and for a new trial. The Montana Supreme Court conducted a de novo review, struck several findings and items of testimony as irrelevant or beyond the scope of the complaint, adopted the remaining findings and conclusions, and imposed an indefinite suspension of at least three months.

DISPOSITION

other

CASES CITED

- Goldstein/Albers v. Commission on Practice, 2000 MT 8, 297 Mont. 493, 501, 995 P.2d 923