

In the Court of Appeals of the State of Alaska

Deborah Padilla,

Appellant,

v.

State of Alaska,

Appellee.

Trial Court Case No. **4FA-16-01426CR**

Court of Appeals No. **A-12992**

Order to Show Cause

Date of Order: **10/7/2019**

Before: Chief Judge Allard, Wollenberg, and Harbison, Judges.

This case came before the Court on September 25, 2019 for oral argument. The oral argument was scheduled at the request of Kenneth Covell, attorney for Deborah Padilla. Although notice was sent to Mr. Covell, Mr. Covell did not appear for the argument at the scheduled time. The Court now orders Mr. Covell to show cause why he did not appear or file a timely motion to continue the oral argument.

Summary of proceedings and additional information needed

Mr. Covell filed a request for oral argument on June 6, 2019. His request indicated that he would not be available from August 23, 2019 through September 3, 2019 and September 9, 2019 through September 24, 2019. The argument in this case was scheduled for September 25, 2019, after Mr. Covell's period of unavailability. This Court sent notice to Mr. Covell on August 22, 2019 informing him of the scheduled time for the argument.

The scheduling notice indicated that oral argument would be held on Wednesday, September 25, 2019 at 10:45 a.m. It provided that the oral argument would be rescheduled if counsel was unavailable.

The scheduling notice was sent to Mr. Covell's mailing address, 712 8th Avenue, Fairbanks, AK 99701. Because the scheduling notice was not returned to the Court, the Court presumes that Mr. Covell's office received the notice. Mr. Covell did not ask to reschedule the oral argument, and he did not file a motion to appear by phone.

On September 25, 2019, Mr. Covell did not appear for oral argument in this case. The court clerk telephoned Mr. Covell's office and was told that Mr. Covell was not there. Eventually, Mr. Covell telephoned the clerk's office, and the call was transferred into the courtroom.

When the Court went on record, Mr. Covell told the Court that he had no recollection of receiving notice of the oral argument and was not prepared to argue the case. He also stated that this case is his only appellate case and that both he and his secretary, who are the only two people who work in his office, have been "looking out for it [the notice]." At Mr. Covell's request, the Court continued the matter to the next oral argument calendar. Mr. Covell also informed the Court that he would be unavailable for "most of November."

After going off record in this case, the Court became aware that Mr. Covell has at least one other appellate matter in this Court. In that case, *State v. Johnson*, Court of Appeals File No. A-13492, Mr. Covell's response to the State's petition for review recently became past due, and on September 13, 2019, the clerk's office contacted his office to check on the status. Mr. Covell's office informed the clerk that he was on a cruise ship and unavailable. His office also informed the clerk that Mr. Covell does not

wish to represent Mr. Johnson in the appeal. Mr. Covell's office was instructed that Mr. Covell must file a motion for extension of time and a motion to withdraw no later than Monday, September 16, 2019. These motions were timely filed on September 16, 2019, but someone other than Mr. Covell signed the motions.

An attorney's duty to act with reasonable diligence in representing a client includes the requirement that an attorney remain aware of scheduling orders in trial and appellate proceedings.¹ Because of the procedural history we have described above, the Court now requires Mr. Covell to show cause why he did not appear for the oral argument in this case or file a timely motion to continue the oral argument.

IT IS THEREFORE ORDERED:

1. Attorney Kenneth Covell is ordered to show why he did not appear for oral argument on September 25, 2019, or file a timely motion to continue the oral argument.

2. Prior to responding to this order, Mr. Covell shall review his office records regarding this case and any other open appellate case, including relevant e-mails. He also shall inquire of his secretary, any other office staff, and anyone designated to sign documents on his behalf, to obtain information about the issues raised by this order. In his response to this order, Mr. Covell shall clearly confirm that he has done this.

3. In addition to any other information Mr. Covell would like to provide to this Court, he shall answer the follow questions:

a. Did his office receive the Notice of Oral Argument dated August 22, 2019?

¹See Alaska R. Professional Conduct 1.3; *Disciplinary Matter Involving Brady*, 387 P.3d 1 (Alaska 2016).

b. Is he monitoring this case and his other cases with this Court when he is out of the office? If so, how is this done?

c. If any information he provided orally to the Court on September 25, 2019 was inaccurate, in what way was it inaccurate?

4. Mr. Covell's response to this order to show cause shall be filed under oath on or before October 21, 2019.

Entered at the direction of the Court.

Clerk of the Appellate Courts

Sarah Anderson, Deputy Clerk

cc: Court of Appeals Judges

Distribution:

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