

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 17-0448

FILED

FEB 26 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE MATTER OF TINA L. MORIN.

An Attorney at Law,

Respondent.

ORDER

On July 28, 2017, a formal disciplinary complaint was filed in this matter against Montana attorney Tina L. Morin. The disciplinary complaint may be reviewed by any interested person in the office of the Clerk of this Court.

The Commission on Practice (COP) held a hearing on the complaint on December 3 and 4, 2018. Both the Office of Disciplinary Counsel (ODC) and Morin, as represented by their respective counsel, presented argument and questioned witnesses.

On January 2, 2019, the COP submitted to this Court its Findings of Fact, Conclusions of Law, and Recommendation for discipline. Morin then filed objections, and the ODC filed a reply.

This Complaint arose from Morin's involvement with the guardianship of J.A.L., an incapacitated person. After the Second Judicial District Court, Silver Bow County, affirmed the appointment of J.A.L.'s brother and sister-in-law as her guardians and conservators, authorized them to restrict J.A.L.'s husband's access to her, and awarded them attorney fees, Morin represented J.A.L.'s husband in appealing those orders to this Court.¹ Morin also represented him in his efforts to expand his right of access to J.A.L., both before and after this Court affirmed the appealed orders.

After Morin undertook representation of J.A.L.'s husband, she learned the District Court had appointed attorney Debbie Churchill to represent J.A.L. in some capacity. The

¹ See *In re J.A.L.*, 2014 MT 196, 376 Mont. 18, 329 P.3d 1273.

District Court's order of appointment was captioned "Order Appointing Attorney to Represent an Alleged Incapacitated Person" and it states in relevant part that Churchill was appointed to represent J.A.L. "and shall have the powers and duties of a guardian ad litem." Morin examined Churchill's actions in the case and determined she had consistently advocated for what Churchill determined was J.A.L.'s best interest and did not advocate for J.A.L.'s stated interests. Morin further believed Montana law no longer allowed for a single person to act as both attorney and guardian ad litem for an individual. She concluded Churchill was only a guardian ad litem and that J.A.L. was unrepresented. She further concluded Churchill's appointment as guardian ad litem would have ended when the District Court confirmed J.A.L.'s brother and sister-in-law as permanent guardians.

Morin then proceeded to exclude Churchill from service in her filings. Morin was unsuccessful in obtaining any relief for her client, either via appeal to this Court, via requests to attorney Stephen Shapiro, who represented J.A.L.'s guardians, via the numerous motions she filed in the District Court, or via a Petition for Writ of Mandate she filed in this Court. J.A.L.'s guardians strictly controlled access to J.A.L. and Morin became convinced that J.A.L.'s civil rights were being violated.

Morin sought the assistance of Disability Rights Montana (DRM), which has a federal right to access disabled individuals. DRM visited J.A.L. and determined she was not abused or neglected. Morin was insistent that DRM take further action, alleging that J.A.L. was being denied legal representation. Morin did not inform DRM that Churchill had represented J.A.L. in any capacity.

Although Morin urged DRM to challenge the guardianship, DRM did not have the resources to do so. Morin asked DRM to use its right of access to have an attorney visit J.A.L. to determine if she desired legal representation. DRM agreed. Morin then contacted attorney Genet McCann, who agreed to visit J.A.L. under DRM's right of access.² McCann, accompanied by a DRM representative, then visited J.A.L. J.A.L. signed a representation

² McCann was subject to discipline for her actions in this matter and she has since been disbarred for her actions in another matter.

agreement with McCann. McCann and DRM entered into an association agreement for McCann's representation of J.A.L., which DRM understood would be pro bono. However, DRM was unaware that McCann, with Morin's knowledge and approval, had also entered into a representation agreement with J.A.L.'s husband in which she agreed to pursue his interests in removing J.A.L.'s guardians. Morin knew McCann had entered into both representation agreements. However, she maintained there was no conflict of interest because J.A.L. and her husband had common goals.

McCann then took actions in her representation of J.A.L. which exceeded the scope of her agreement with DRM. DRM disassociated from the matter.

J.A.L.'s guardians filed a complaint with the ODC concerning Morin's actions. The ODC charged Morin with professional misconduct. In its Complaint, the ODC contended Morin knew or should have known that the District Court appointed Churchill as both attorney and guardian ad litem for J.A.L. The ODC alleged Morin violated Montana Rules of Professional Conduct 4.2(a) and 8.4(a) by inducing McCann to have unauthorized contact with J.A.L. while Churchill represented J.A.L. The ODC further alleged Morin violated M. R. Pro. Cond. 8.4(d) because she attempted to induce McCann to file a Petition for Writ of Mandate on J.A.L.'s behalf to serve Morin's client's interests.

After hearing, the COP found Morin knew Churchill was acting as J.A.L.'s attorney and that her claimed belief that Churchill was only guardian ad litem was not credible. It found she failed to advise DRM of Churchill's role, and neither she nor McCann disclosed to DRM that Morin had already orchestrated and approved an attorney-client contract between McCann and J.A.L.'s husband. The COP found neither McCann nor Morin sought informed consent from J.A.L., her husband, or her guardians to waive the conflict of interest, assuming it was a waivable conflict. The COP found Morin used, directed, and controlled McCann to ostensibly represent J.A.L. while simultaneously representing a person with adverse interests, J.A.L.'s husband, to pursue his and Morin's agenda. It found Morin used McCann's ostensible representation of J.A.L. as a subterfuge to pursue expanded visitation for J.A.L.'s husband and Morin knowingly assisted and/or inducted McCann into violating the Montana

Rules of Professional Conduct. It pointed to an e-mail Morin sent to McCann in 2017, in which she directed McCann to tell Shapiro that McCann did not represent J.A.L.'s husband—a statement Morin knew to be untrue as she had signed McCann's attorney-client agreement with J.A.L.'s husband several months earlier.

Based on these and other findings, the COP concluded McCann acted as Morin's agent and surrogate in this matter, and Morin violated M. R. Pro. Cond. 4.2(a), 4.2(d), and 8.4(a) due to her and McCann's actions.

The COP recommended Morin be suspended from the practice of law for a period of not less than seven months, and assessed the cost of these proceedings. The COP noted this was Morin's second disciplinary proceeding within a year and both instances, in the COP's opinion, reflected "an unreasonable method of practicing law that employs intimidation, accusation and artifice to accomplish her goals" and, "Morin's conduct displays a determination to accomplish her goals by any means, including unethical ones." The COP found it significant that Morin created after-the-fact justifications for her behavior and failed to show remorse, accept responsibility, or express contrition for her conduct.

In her objections, Morin argues: the COP erred in finding Churchill acted both as attorney and guardian ad litem for J.A.L. because such dual representation is contrary to law; the COP erred in finding Morin knew or should have known Churchill was J.A.L.'s attorney because Morin could not "know" a "fact" that is contrary to law; the Chairman of the COP erred when he precluded Morin from calling an expert witness to testify about whether a district court can appoint a private fee-charging attorney to represent an incapacitated person; the Chairman of the COP erred when he precluded Morin from calling J.A.L. as a witness; the Chairman of the COP erred when he limited Morin's ability to question witnesses about Churchill's actions in the case; the COP erred in concluding McCann acted as Morin's agent and surrogate; the COP erred in concluding the District Court appointed Churchill as J.A.L.'s attorney and that her role as guardian ad litem did not terminate when the court appointed permanent guardians; and Morin did not violate any of the Montana Rules of Professional Conduct in this matter. Morin further raises over 40 objections to specific factual findings

made by the COP.

This Court reviews de novo the Commission's findings of fact, conclusions of law, and recommendations. *In re Neuhardt*, 2014 MT 88, ¶ 16, 374 Mont. 379, 321 P.3d 833 (citation omitted). This Court reviews matters of trial administration for abuse of discretion. Further, despite its duty to weigh the evidence, this Court "remain[s] reluctant to reverse the decision of the Commission when its findings rest on testimonial evidence. We recognize that the Commission stands in a better position to evaluate conflicting statements after observing the character of the witnesses and their statements." *In re Neuhardt*, ¶ 16 (quoting *In re Potts*, 2007 MT 81, ¶ 32, 336 Mont. 517, 158 P.3d 418).

We have thoroughly reviewed the record in this matter. Even if we were to assume that Morin is legally correct that the District Court erred in appointing Churchill to act as both attorney and guardian ad litem for J.A.L., it would not justify Morin's actions in the present case. The record is abundantly clear that the District Court did in fact appoint Churchill to act as both attorney and guardian ad litem for J.A.L. An experienced attorney, Morin surely understood the court's intention when she reviewed the record. Had she considered it an erroneous decision, she should have challenged the appointment in the courts. She did not have the option to simply ignore Churchill's appointment as attorney and then unilaterally conclude that Churchill's appointment as guardian ad litem had terminated. Although Morin had a basis to believe the appointment as both attorney and guardian ad litem may have been unlawful, she did not have the right to pretend Churchill's appointment as attorney for J.A.L. did not exist because that suited the needs of her client.

As such, the vast majority of Morin's objections in this matter are inapposite. The issue at hand is not whether the District Court erred in appointing Churchill; the issue is whether Morin violated the Montana Rules of Professional Conduct through her actions in this case. For that reason, it is irrelevant whether Churchill's appointment was contrary to law, and the testimony Morin sought to offer via her expert witness, J.A.L., and other witnesses regarding Churchill's role is irrelevant. Aside from Morin's own theory that Churchill was only a guardian ad litem, there is no evidence that Churchill's appointment

terminated when the District Court appointed permanent guardians for J.A.L.

The majority of the objections Morin makes to the COP's findings are of no consequence as they go to the issue of whether the District Court erred in its appointment of Churchill, which we have found to be irrelevant to the present case. Others are based on Morin's contentions, which neither the COP nor this Court finds credible, that she believed the District Court appointed Churchill as guardian ad litem only. In the remainder, Morin either suggests rewording to make findings less "confusing" or quibbles over details that have no bearing on the outcome: for example, she objects to the COP's finding that she was "retained" by J.A.L.'s husband because he paid her no retainer. This Court will not spend its time and resources to investigate and correct inconsequential details that cannot conceivably change the outcome here.

As to the remaining issue—whether the COP erred in concluding McCann was Morin's agent and surrogate—Morin maintains the COP misuses the word "surrogate" in this context. She further argues McCann did not approach J.A.L. as Morin's agent, but as the agent of J.A.L.'s husband. The ODC responds that regardless of word choice, the substance of the issue is that Morin recruited McCann to do her bidding and manipulated DRM into getting McCann access to J.A.L. The ODC points to M. R. Pro. Cond. 4.2(a), which provides, "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." The ODC argues Morin cannot circumvent this Rule by using a third party to accomplish the communication. We agree. In this instance, Morin, representing J.A.L.'s husband, used McCann and DRM to communicate with J.A.L. without the consent of Churchill, J.A.L.'s appointed counsel. In so doing, Morin violated M. R. Pro. Cond. 4.2(a).

Moreover, consistent with the COP's conclusions, we hold that Morin violated M. R. Pro. Cond. 8.4(a) and 8.4(d) in this matter. M. R. Pro. Cond. 8.4(a) provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

M. R. Pro. Cond. 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Morin's enlistment of McCann to obtain access to J.A.L. and gain representation of J.A.L. via subterfuge and manipulation, while Morin knew Churchill represented J.A.L., violated these Rules and prejudiced the administration of justice.

Additionally, Morin objects to the discipline recommended by the COP, which she characterizes as "unduly harsh." She alleges she did not owe a duty to Churchill because Churchill did not adequately represent J.A.L. and thus McCann's subsequent representation of J.A.L. had no adverse impact on Churchill's and J.A.L.'s attorney-client relationship. She further alleges that there was no nexus between her conduct and an adverse effect on the administration of justice. She further argues that the Complaint did not accuse her of practicing law in an unreasonable manner and she had no opportunity to defend against such a charge. Finally, she argues that her punishment should be mitigated by the facts of this case and that the actions she undertook were to further her pro bono representation of an elderly man who sought the right to visit his incapacitated wife.

If anything, Morin's arguments support the COP's position that she has failed to show remorse, accept responsibility, or express contrition for her conduct. We do not agree that the COP's recommendations are unduly harsh.

Based upon the foregoing,

IT IS HEREBY ORDERED:

1. The COP's Findings of Fact, Conclusions of Law and Recommendation for Discipline are ACCEPTED and ADOPTED.

2. Tina L. Morin is hereby suspended from the practice of law in Montana for an indefinite period of not less than seven months, effective thirty days from the date of this Order. Morin is directed to give notice of her suspension to all clients she represents in pending matters, any co-counsel in pending matters, all opposing counsel and self-represented opposing parties in pending matters, and all courts in which she appears as counsel of record in pending matters, as required by Rule 30 of the Montana Rules for

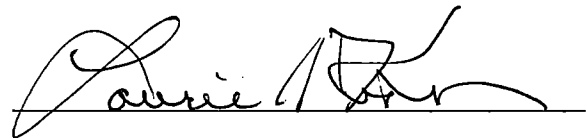
Lawyer Disciplinary Enforcement.

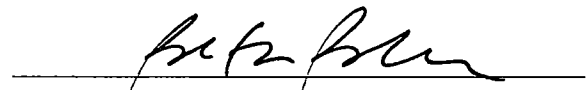
3. Tina L. Morin shall pay the costs of these proceedings, subject to the provisions of Rule 9(A)(8) of the Montana Rules for Lawyer Disciplinary Enforcement allowing her to file objections to the statement of costs.

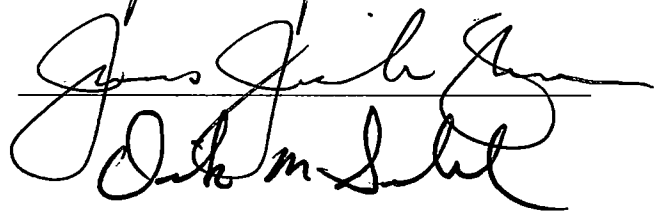
The Clerk of this Court is directed to serve a copy of this Order of Discipline upon counsel for Tina L. Morin, and to provide copies to Disciplinary Counsel, the Office Administrator for the Commission on Practice, the Clerks of all the District Courts of the State of Montana, each District Court Judge in the State of Montana, the Clerk of the Federal District Court for the District of Montana, the Clerk of the Circuit Court of Appeals of the Ninth Circuit, and the Executive Director of the State Bar of Montana.

DATED this ⁴²26 day of February, 2019.

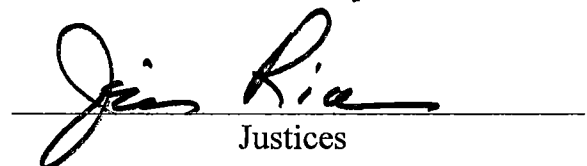

Chief Justice










Justices