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Attorneys for Respondent

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

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|----------------------------------|---|--------------------------|
| IN THE MATTER OF MEGHAN M. DOUD, |) | Supreme Court Cause No. |
| An Attorney at Law, |) | PR 21-0081 |
| Respondent. |) | ODC File No. 19-137 |
| |) | ANSWER TO AMENDED |
| |) | COMPLAINT |

Meghan M. Doud (“Doud”) through counsel respectfully submits her Answer to the Office of Disciplinary Counsel's (“ODC”) Amended Complaint, and states and alleges to the Commission on Practice as follows:

FIRST DEFENSE

Doud denies each and every allegation of ODC’s Amended Complaint except those admitted, qualified, or explained in this Answer to Amended Complaint.

SECOND DEFENSE
General Allegations

1. Doud admits the allegations of ¶ 1 of the Amended Complaint.
2. Doud admits the allegations of ¶ 2 of the Amended Complaint.
3. Doud admits the allegations of ¶ 3 of the Amended Complaint only

insofar as they allege that (a) at all times pertinent to the Amended Complaint, she practiced law in Kalispell or Helena, Montana with her father, Timothy W. McKeon (“McKeon”), under the firm name McKeon Doud, P.C.; (b) McKeon Doud, P.C.’s main areas of practice included, but were not limited to personal injury, medical malpractice, and workers’ compensation; and (c) McKeon Doud, P.C. handled many but not all cases on a contingent fee basis. Doud affirmatively alleges that, at all times pertinent to the Amended Complaint, McKeon Doud, P.C. was a professional corporation and she and McKeon were shareholders of the corporation. Doud denies the remaining allegations of ¶ 3 of the Amended Complaint.

4. Doud admits the allegations of ¶ 4 of the Amended Complaint only insofar as they allege that (a) during the period January 1, 2016 through March 31, 2020, the Firm transferred funds from the Firm’s IOLTA accounts at First Interstate Bank (“FIB”) and Glacier Bank (“Glacier”) to McKeon Doud, P.C.’s operating account, other McKeon Doud, P.C. accounts, or personal accounts; and (b) some transfers were in amounts inconsistent with actual earned fees and cost

reimbursements related to a particular client's case. Doud denies the remaining allegations of ¶ 4 of the Amended Complaint.

5. Doud admits the allegations of ¶ 5 of the Amended Complaint only insofar as they allege that (a) Doud was the sole signator on McKeon Doud, P.C.'s IOLTA accounts; and (b) McKeon had access to make electronic transfers among the accounts and on occasion had done so. Doud denies the remaining allegations of ¶ 5 of the Amended Complaint.

6. Doud denies the allegations of ¶ 6 of the Amended Complaint.

Count One
(Misappropriation and Mishandling of Trust Account Funds)

7. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count One.

8. Doud admits she transferred funds from the Firm's IOLTA accounts to the Firm's operating accounts, other Firm accounts, or McKeon and Doud's personal accounts; admits there are disputes concerning whether transfers of some funds were for unearned fees or whether some transfers were funds belonging to clients or third parties; but alleges Doud believed in good faith that the transfers were justified by existing fee agreements and her understanding of appropriate practice.

9. Doud is unable to determine to which clients the allegations of ¶ 9 refer, is thus without sufficient information to admit or deny their truth, and therefore denies the allegations of ¶ 9 of the Amended Complaint.

10. Doud admits the allegations of ¶ 10 of the Amended Complaint.

11. Doud admits the allegations of ¶ 11 of the Amended Complaint.

12. Doud admits that the FIB IOLTA balance on March 31, 2020 was \$44,331.01, and denies the allegations of ¶ 12 of the Amended Complaint.

13. Paragraph 13 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 1.15 and 1.18, MRPC.

14. Paragraph 14 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 8.4(b) and (c), MRPC.

Count Two
(Co-Mingling Attorney's Funds with Client Funds)

15. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Two.

16. Doud admits the allegations of ¶ 16 only insofar as they allege that in some cases she, or she at McKeon's direction, did not disburse the earned

attorney's fees and costs reimbursements immediately after client settlement funds were deposited into the IOLTA accounts. Doud denies the frequency implied in the allegations of ¶ 16 and the purpose of the action alleged in ¶ 16.

17. Paragraph 17 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 1.15, 1.18, and 8.4(c), MRPC.

Count Three
(Unreasonable Fees and Costs)

18. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Three.

19. Doud admits the allegations of ¶ 19 of the Amended Complaint only insofar as they allege that (a) McKeon Doud, P.C. charged clients for staff time for medical/nurse consulting or paralegal services on some client cases at an hourly rate as a cost; (b) there were no invoices from outside parties with whom the Firm contracted for the services; (c) the individuals performing those services were Firm employees; (d) the costs were deducted from the gross settlements in addition to the contingent fees; and (e) the Firm's contingent fee agreements did not include an hourly rate at which the services would be charged. Doud affirmatively alleges the clients' signed settlement statements agreeing to the costs

charged; denies the frequency implied in ¶ 19 and denies the remainder of the allegations of ¶ 19 of the Amended Complaint.

20. Doud denies the allegations of ¶ 20 of the Amended Complaint.

21. Doud admits the allegations of ¶ 21 of the Amended Complaint only insofar as they allege that McKeon negotiated client medical liens and McKeon Doud, P.C. took a fee in addition to the negotiated contingent fee for doing so; affirmatively alleges that she repeatedly disagreed with McKeon that his interpretation of the applicable law and regulations was accurate; and denies the remaining allegations of ¶ 21.

22. Paragraph 22 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 1.5(a)-(c), MRPC.

23. Paragraph 23 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 8.4(b) and (c), MRPC.

Count Four
(Fee Agreements)

24. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Four.

25. Doud admits McKeon Doud, P.C. was unable to produce signed contingent fee agreements for a limited number of clients in violation of Rule 1.5(c), MRPC, and denies the remaining allegations of ¶ 25 of the Amended Complaint.

Count Five
(Trust Account Maintenance)

26. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Five.

27. Doud admits the allegations of ¶ 27 only insofar as they allege that (a) for the period from at least January 1, 2016 through March 31, 2020, she failed to properly maintain McKeon Doud, P.C.'s IOLTA accounts; and (b) record-keeping errors occurred. Doud denies the remaining allegations of ¶ 27 of the Amended Complaint.

28. Doud admits the allegations of ¶ 28 only insofar as they allege that she did not keep a ledger for McKeon Doud, P.C.'s IOLTA accounts or separate ledgers for all McKeon Doud, P.C. clients, and denies the remaining allegations of ¶ 28 of the Amended Complaint.

29. Doud admits the allegations of ¶ 29 of the Amended Complaint.

30. Paragraph 30 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required,

Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rule 1.18(e), MRPC.

Count Six
(Communication)

31. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Six.

32. Doud admits the allegations of ¶ 32 only insofar as they allege that (a) McKeon negotiated four (4) settlements for client A.D. for her personal injury sustained as a result of a motor vehicle accident; (b) McKeon Doud, P.C. has not obtained A.D.'s signature on settlement statements depicting how the settlement funds were disbursed; and (c) McKeon Doud, P.C. did not produce settlement statements for the first three settlements.

Doud denies the remaining allegations of ¶ 32 of the Amended Complaint and affirmatively alleges that (i) the majority of the settlement funds due to A.D. were distributed to her or, at her request, to A.D.'s mother S.O., on or before October 1, 2016; (ii) A.D. and S.O. for more than a year failed or refused to respond to McKeon Doud, P.C.'s multiple efforts to communicate with A.D. for purposes of resolving the Medicaid and Medicare liens attached to her claims; and (iii) A.D. and S.O. failed to inform McKeon Doud, P.C. of A.D.'s efforts to qualify for Medicaid, Medicare, and disability benefits as they might relate to her personal injury award.

33. Doud denies the allegations of ¶ 33 of the Amended Complaint.

34. Paragraph 34 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rules 1.4 and 8.4(c), MRPC.

Count Seven
(Responsibilities of Partners)

35. Doud realleges and incorporates her answers to ¶¶ 1 through 6 of the General Allegations as if fully restated in this Answer to Count Seven.

36. Paragraph 36 of the Amended Complaint states a conclusion of law to which an answer from Doud is not required. To the extent an answer is required, Doud requests the Commission on Practice to determine whether her conduct constitutes a violation of Rule 5.1(c), MRPC.

THIRD AND AFFIRMATIVE OR MITIGATING DEFENSES

Doud affirmatively alleges that unique factors exist to mitigate the discipline, if any, to be recommended or imposed by the Montana Commission on Practice or imposed by the Montana Supreme Court, including but not limited to the following:

37. **Zealous advocacy.** Doud avers that during the time period relevant to this Amended Complaint, she was distracted from the practice management of

McKeon Doud, P.C. by the complexity and number of and commitment to the serious cases on which she was concurrently associating.

38. **Settlement agreements.** Clients of McKeon Doud voluntarily signed settlement statements and accepted and fully performed the benefits of settlements, thereby supplementing or modifying prior written fee agreements and compromising claims arising out of settlement.

39. **Restitution.** Since the initial grievance that commenced the ODC's investigation, (a) Doud has identified the clients to whom settlement calculation errors or delayed or incomplete payment have occurred and has made full restitution to several; (b) she has partially reimbursed the IOLTA account for sums that were misdirected or incorrectly transferred; and (c) she and McKeon Doud, P.C. continue and will continue to make restitution as McKeon Doud, P.C. and she personally are financially able.

40. **Retention of professional accounting expertise.** Shortly after notice of the initial grievance and understanding of the mistake that led to the grievance, McKeon Doud, P.C., at McKeon's direction, retained the professional accounting and financial management services of Newland and Company to (a) review all office practices and recommend amendment of and assist in implementation to best practices; (b) perform a complete reconciliation of McKeon Doud, P.C.'s IOLTA accounts for the period relevant to the Amended Complaint; (c) continue

to perform or verify monthly and annual reconciliations as required by the Montana Supreme Court's Trust Account Maintenance and Audit Requirements; (d) manage all McKeon Doud, P.C. bank and IOLTA accounts; (e) institute rigorous individual client ledgers; and (f) establish consistent salary and draw protocols.

41. **Remediation of all office management practices.** Prospectively, Doud has diligently identified practice management deficiencies and has implemented her recommended corrective action or replacement best practices to prevent recurrences of noncompliant firm management, including (a) amendment of form fee agreements; (b) implementation of routine intake protocols; (c) amendment of form settlement statements; (d) correction of incorrectly understood lien satisfaction regulations and requirements, and (e) reformation of client exit protocols.

42. **Remedial and continuing education.** Doud has taken CLE courses on IOLTA account maintenance and law practice management, and will continue to focus on that area.

43. **Process irregularities in commencement of prosecution.** Doud avers ODC due process irregularities in the commencement of the investigation of the initial grievance and resulting investigation leading to the Amended Complaint, including (a) failure to make a determination of jurisdiction given the nature of the

grievance; (b) misleading staff recommendations regarding response to the initial grievance and its closure upon which Doud relied; and (c) improper issuance of the investigatory subpoena.

44. **No prior discipline.** Doud has no prior disciplinary record.

45. **Medical and mental impairment.** During the period relevant to the Amended Complaint, Doud suffered from continually worsening preexisting medical diagnoses and resulting mental impairment, the effects of which were amplified by her assumption of firm management duties in addition to her complex and demanding practice of law. These multiplied stressors interfered with the management and resolution of some of McKeon Doud, P.C.'s clients' cases. Doud continues to comply with treatment of her medical diagnoses. She has recognized her resulting mental impairment, is pursuing treatment and counseling, and is committed to stabilization of or recovery from both the medical and mental diagnoses consistent with the recommendations of her health care providers.

46. **Authority over another shareholder.** Prior to the time period relevant to the Amended Complaint, McKeon Doud, P.C. comprised three shareholders—Doud, McKeon, and Doud's husband. Doud's husband was primarily responsible for the business management of the Firm's practice. Doud did not have managing or supervisory authority. Upon Doud's husband's departure to other legal

employment, beginning at the time period relevant to the Amended Complaint, Doud assumed the business management responsibilities for the practice, much of which she was learning at the same time she managed a full law case load. She did not gain supervisory authority over McKeon or the practice. McKeon's supervisory direction frequently overrode or interfered with Doud's exercise of her independent judgment. She nevertheless diligently undertook to reform McKeon Doud, P.C.'s business practices as she identified deficiencies throughout the time period relevant to the Amended Complaint with steady progress. The success of those efforts is now being realized in their implementation and in McKeon's increasing deference to her recommendations and judgment.

47. **Pending cases in progress.** McKeon Doud, P.C. is currently prosecuting 30-40 open cases, the interruption of which will inure to the serious detriment of McKeon Doud, P.C.'s existing clients. Discipline that includes rigorous monitoring of office and legal practice and mentoring of McKeon Doud, P.C. attorneys, while maintaining the viability of open cases is in the best interest of McKeon Doud, P.C. clients.

WHEREFORE, Meghan M. Doud, having fully answered ODC's Amended Complaint, prays that the Commission's Adjudicatory Panel recommend the nature and extent of appropriate discipline that will recognize the corrective and remedial actions Doud has taken, recognize mitigating factors that

explain or justify her conduct, and preserve the viability of McKeon Doud, P.C.'s open cases and Doud's law career.

DATED this 17th day of March, 2021.

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JACKSON, MURDO & GRANT, P.C.

By: /s/ Jacqueline T. Lenmark
Jacqueline T. Lenmark, Esq.
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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of March, 2021, a true and correct copy of the foregoing ANSWER TO AMENDED COMPLAINT was duly served by first-class mail and supplemental email, addressed as follows:

Ms Pamela D Bucy
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Ms. Shelley Smith
Commission on Practice
P O Box 203005
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CERTIFICATE OF SERVICE

I, Jacqueline Terrell Lenmark, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 03-17-2021:

Pamela D. Bucy (Attorney)
P.O. Box 1099
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Electronically signed by Sabrina Hallsten on behalf of Jacqueline Terrell Lenmark
Dated: 03-17-2021