

1 Pamela D. Bucy
2 Chief Disciplinary Counsel
3 P.O. Box 1099
4 Helena, Montana 59624
5 Tel: (406) 442-1648
6 pbucy@montanaodc.org

7 Office of Disciplinary Counsel

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

10 * * * * *

11 IN THE MATTER OF MICHAEL D. 12 MONTGOMERY, 13 An Attorney at Law, 14 Respondent.	}	Supreme Court Cause No. ODC File No. 23-162 COMPLAINT Rules 1.1, 1.3, 1.4, 1.5(b), 1.15, 1.16, and 1.18, MRPC
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16 By leave of the Commission on Practice granted on July 17, 2024, the Office
17 of Disciplinary Counsel for the State of Montana (“ODC”), hereby charges Michael
18 Montgomery with professional misconduct as follows:

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20 **General Allegations**

21 1. Michael Montgomery, hereinafter referred to as Respondent, was
22 admitted to the practice of law in the State of Montana in 2003, at which time
23 Respondent took the oath required for admission, wherein he agreed to abide by the
24 Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme
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1 7. Throughout the following four (4) years, numerous legal issues arose
2 between the two (2) parties including a contempt motion and Order of Protection
3 hearing. Eventually, a new Interim Parenting Plan was entered between the parties,
4 and a trial date was set. On December 7, 2021, the Court entered another Findings
5 of Fact and Conclusions of Law.
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7 8. In June 2022, J.C.'s former spouse and co-parent filed another Motion
8 to Amend the parties' Final Parenting Plan. Respondent moved to withdraw, which
9 the Court granted on July 7.
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11 9. The Missoula County matter was initiated in March 2021 when the
12 father of another of J.C.'s children, D.R., filed a Petition for Parenting Plan. After
13 filing and serving his Petition, D.R. retained attorney, Stephanie DeBoer
14 ("DeBoer"), in May 2021.
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16 10. On June 8, DeBoer filed a request to enter default, and Respondent filed
17 a Notice of Appearance for J.C. that same day. The next day, Respondent filed J.C.'s
18 Response to the March Petition, as well as a Response to the Request for Default or
19 in the Alternative, to Set Aside Default. However, no default was entered, and no
20 other action was taken until May 2023.
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22 11. In early May, DoBoer emailed Respondent seeking his position on her
23 request for mediation. Respondent indicated he had no objection, but he would be
24 withdrawing. On May 8 DoBoer filed a request for the parties to attend mediation.
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1 The Court issued an Order on May 9, requiring the parties to complete mediation
2 before August 15. DoBoer again emailed Respondent and requested he either
3 withdraw or provide J.C.'s contact information; he did not respond. DoBoer then
4 emailed the mediator and included Respondent.

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6 12. Respondent failed to respond to the email exchanges and a date for
7 mediation was never set. Respondent also failed to advise J.C. of the request for
8 mediation or the Court's subsequent order.

9
10 13. Due to Respondent's failure to communicate, DeBoer filed a Request
11 for Final Hearing on July 26. In the Court's July 29 Order, a final hearing was set
12 for August 22. Neither Respondent nor J.C. appeared at the hearing, and D.R's
13 Proposed Parenting Plan was adopted as the Final Parenting Plan that same date.

14
15 14. Respondent failed to notify J.C. of the August 22 hearing or the Courts
16 Order.

17
18 15. Court records reflect that on August 23, the Judge's law clerk attempted
19 to call Respondent, and immediately thereafter, emailed him. The clerk asked
20 Respondent about the status of his representation of J.C. and notified him that she
21 had attempted to call him, but his phone number was disconnected. Respondent
22 responded the following day, stating he did not represent J.C., had not spoken to her
23 in over a year, and had moved to Wisconsin.

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1 16. J.C. subsequently filed a *pro se* Affidavit on September 6, 2023, which
2 stated she had not received notice of the recent filings, was unaware there had been
3 a hearing, and she had only learned of the hearing after the fact, and immediately
4 attempted to contact Respondent. J.C. attached copies of her correspondence with
5 Respondent wherein she informed him that he never withdrew from her case, and
6 because of this, she was unaware of recent developments, resulting in her losing
7 custody of her child.
8

9 17. Respondent advised J.C. that he had moved to Wisconsin and directed
10 her to “motion to set aside judgment”. J.C. informed Respondent she could not file
11 anything because he was still counsel of record. Respondent then informed J.C. that
12 he had forgotten his e-filing credentials, so he could not file his motion to withdraw.
13 J.C. asked that the Court provide her an opportunity to be heard in the matter. On
14 September 13, the Court granted Respondent’s Motion to Withdraw and set a
15 hearing on the matter, only after allowing Respondent to file his motion via email.
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18 18. Respondent’s failure to withdraw or update J.C. as to the status of her
19 case resulted in her complete lack of awareness and missing both the mediation, and
20 final hearing. At which, the Court adopted a parenting plan that significantly
21 impacted her parenting time.
22

23 19. Respondent failed to notify J.C. of his move from the state, his intent
24 to withdraw, and the numerous developments and orders in her case. Respondent
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1 failed to take any independent action once he discovered he and J.C. had missed a
2 hearing and that he was still counsel of record. Respondent placed the burden of
3 informing the Court and remedying the situation on his client. Respondent's conduct
4 was neither competent nor diligent.

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6 20. Respondent's conduct outlined above constitutes a violation of Rule
7 1.1, Competence; Rule 1.3, Diligence; Rule 1.4, Communication, and Rule 1.16,
8 MRPC.

9 **Count Two**

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11 21. ODC realleges and incorporates paragraphs 1 through 4 of the General
12 Allegations and paragraphs 5 through 20 as if fully restated in this Count Two.

13 22. Respondent initially represented J.C. *pro se*. Thereafter, J.C. paid
14 Respondent two (2) cash retainers: \$2,500 and \$3,500.

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16 23. Respondent failed to place any of the fees into his IOLTA/Trust
17 Account and collected and treated the entirety of the fees as "earned upon receipt."

18 24. Respondent was unable to provide invoices or time keeping records to
19 reflect that he had earned the entirety of J.C.'s fees at the times he collected them.

20
21 25. Respondent also advised ODC that he also did not create or keep a
22 client ledger (or ledgers) or reconcile his IOLTA/Trust Account at any time.

23
24 26. The MRPC specifically outlines that advanced fees and costs must be
25 placed into IOLTA and that they may only be withdrawn as they are earned.

