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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 24-0442

FILED

08/13/2024

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

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

IN THE MATTER OF MICHAEL D.
MONTGOMERY,
An Attorney at Law,
Respondent.

Supreme Court Cause No. PR 24-0442

ODC File No. 23-162

**CONDITIONAL ADMISSION AND
AFFIDAVIT OF CONSENT**

STATE OF WISCONSIN

)

: ss.

COUNTY OF WOOD

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I, Michael D. Montgomery, being first duly sworn upon oath deposes and affirms as follows.

1. I am the respondent. I tender my conditional admission and make this Affidavit of Consent pursuant to Rule 26, Montana Rules for Lawyer Disciplinary Enforcement ("MRLDE"), in exchange for the stated forms of discipline.

2. I am a lawyer against whom a formal complaint has been filed alleging ethical misconduct. I am informed and aware of the allegations against me and understand that, if those allegations are proved by clear and convincing evidence, there exist grounds for discipline against me.

1 3. I present this Affidavit of Consent and my tendered admission to an Adjudicatory
2 Panel of the Commission on Practice in exchange for the form of discipline described below. If
3 the Commission on Practice approves my tendered admission, I acknowledge my tendered
4 admission is subject to acceptance or rejection by the Montana Supreme Court. If my conditional
5 admission is rejected by either the Commission on Practice or the Supreme Court, then I
6 understand my admission shall be deemed withdrawn and cannot be used against me in this or any
7 subsequent proceeding.

8 4. My consent to discipline is freely and voluntarily tendered. I am not subject to
9 coercion or duress of any kind. I am fully aware of the implications of submitting my conditional
10 admission and affidavit of consent.

11 5. Consistent with the foregoing, I admit the following allegations contained in the
12 Complaint are true. Specifically, I admit:

- 13 i. I was admitted to the practice of law in the State of Montana in 2003 and
14 primarily practiced in Ravalli and Missoula Counties with an office in
15 Hamilton, Montgomery Law Office.
16 ii. In 2004 I was disciplined for violations of Rule 1.1, Competence; Rule 1.3,
17 Diligence; and Rule 3.2, Expediting Litigation, Montana Rules of
18 Professional Conduct ("MRPC").
19 iii. For the past fifteen (15) years, I ran a bi-weekly free clinic every other
20 Friday at the courthouse in Hamilton for parents who could not afford an
21 attorney in the Bitterroots. This is where I met my former client J.C. who I
22 represented in two (2) family law cases: one (1) out of Ravalli County and
23 one (1) in Missoula County beginning in approximately 2017.
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iv. In January 2023 I began closing my Hamilton office and in May 2023, I closed my IOLTA account d/b/a “Montgomery- Law Offices” and- moved to Wisconsin, where I currently reside and have submitted an application for admission to the State Bar of Wisconsin.

Count One

v. I entered a pro bono appearance on J.C.'s behalf on June 7, 2017, in Ravalli County. A hearing was held on June 8, 2017, and the Court entered the Final Findings of Fact, Conclusions of Law, Final Decree, and Parenting Plan, that same date.

vi. Throughout the following four (4) years, numerous legal issues arose between the two (2) parties including a contempt motion and Order of Protection hearing. Eventually, a new Interim Parenting Plan was entered between the parties, and a trial date was set. On December 7, 2021, the Court entered another Findings of Fact and Conclusions of Law.

vii. In June 2022, J.C.'s former spouse and co-parent filed another Motion to Amend the parties' Final Parenting Plan. I moved to withdraw, which the Court granted on July 7.

viii. J.C.'s Missoula County matter was initiated in March 2021 when the father of her other child, D.R., filed a Petition for Parenting Plan. After filing and serving his Petition, D.R. retained attorney, Stephanie DeBoer ("DeBoer"), in May 2021.

ix. On June 9 I filed a Notice of Appearance for J.C. following DeBoer's request to enter default filed the day before. I then filed J.C.'s Response to

1 the March Petition, as well as a Response to the Request for Default or in
2 the Alternative, to Set Aside Default. However, no default was entered, and
3 no other action was taken until May 2023.

4 x. In early May, DoBoer emailed me requesting my position on her request for
5 mediation. I indicated I had no objection, but informed DoBoer that I would
6 be withdrawing as I had moved to Wisconsin and was no longer
7 representing J.C.

8 xi. Court records reflect that on May 8 DoBoer filed a request for the parties to
9 attend mediation. The Court issued an Order on May 9, requiring the parties
10 to complete mediation before August 15. DoBoer again emailed me and
11 requested I either withdraw or provide J.C.'s contact information; I did not
12 respond. DoBoer then emailed the mediator and included me on the email.

13 xii. I failed to respond to the email exchanges with DoBoer. Therefore, a date
14 for mediation was never set. I also failed to advise J.C. of the request for
15 mediation or the Court's subsequent order.

16 xiii. DeBoer filed a Request for Final Hearing on July 26. In the Court's July 29
17 Order, a final hearing was set for August 22. Neither myself or J.C. appeared
18 at the hearing, and D.R.'s Proposed Parenting Plan was adopted as the Final
19 Parenting Plan that same date.

20 xiv. I failed to notify J.C. of the August 22 hearing or the Courts Order.

21 xv. On August 23 the Judge's law clerk emailed me inquiring about the status
22 of my representation of J.C. The clerk also notified me that she had
23 attempted to call, but my phone number was disconnected. I responded the
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1 following day, stating I did not represent J.C., had not spoken to her in over
2 a year, and had moved to Wisconsin.

3 xvi. Court records reflect that J.C. subsequently filed a pro se Affidavit on
4 September 6, 2023, which stated she had not received notice of the recent
5 filings, was unaware there had been a hearing, and she had only learned of
6 the hearing after the fact, and immediately attempted to contact me. J.C.
7 attached copies of our communications with her Affidavit wherein I advised
8 her I had moved to Wisconsin and directed her to file a motion to set aside
9 the judgment. J.C. informed me she could not file anything because I was
10 still counsel of record. I informed J.C. that I had forgotten my e-filing
11 credentials, so I was unable to file a motion to withdraw.

12 xvii. On September 13 the Court granted my motion to withdraw after allowing
13 me to file it via email.

14 xviii. My failure to withdraw or update J.C. as to the status of her case resulted in
15 her complete lack of awareness and missing both the mediation, and final
16 hearing. At which, the Court adopted a parenting plan that significantly
17 impacted her parenting time.

18 xix. I failed to notify J.C. of my move to Wisconsin, my intent to withdraw, and
19 the numerous developments and orders in her case. I failed to take any
20 independent action once I discovered we had missed a hearing and that I
21 was still counsel of record. I placed the burden of informing the Court and
22 remedying the situation on J.C. My conduct was neither competent nor
23 diligent.
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xx. My conduct outlined above constitutes a violation of Rule 1.1, Competence; Rule 1.3, Diligence; Rule 1.4, Communication, and Rule 1.16, MRPC.

Count Two

xxi. I initially represented J.C. pro se. Thereafter, J.C. paid two (2) cash retainers: approximately \$2,500 and \$3,500.

xxii. I failed to place any of the fees into my IOLTA/Trust Account and collected and treated the entirety of the fees as “earned upon receipt.”

xxiii. I was unable to provide invoices or time keeping records to reflect that I had earned the entirety of J.C.’s fees at the times I collected them.

xxiv. I did not create or keep a client ledger (or ledgers) or reconcile my IOLTA/Trust Account at any time.

xxv. My conduct outlined above constitutes a violation of Rule 1.15, Safekeeping Property; and Rule 1.18, IOLTA Program, MRPC.

Count Three

xxvi. I did not provide J.C. with a written fee agreement, outlining the scope of work or my fees, even after my rate changed and the representation was no longer pro bono.

xxvii. I am unable to recall or provide documentation depicting the exact amounts of J.C.’s payments. I did not issue receipts, track my time, or invoice my services in either matter.

xxviii. My conduct outlined above constitutes a violation of Rule 1.5, Fees, MRPC.

6. I tender my admissions in exchange for the following forms of discipline:

i. A thirty (30) day suspension from the practice of law in Montana;

