PR 21-0081

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 29

IN THE MATTER OF MEGHAN DOUD,

An Attorney at Law,

Respondent.

PROFESSIONAL REGULATION: Commission on Practice of the Supreme Court of the State of Montana, ODC File No. 19-137

COUNSEL OF RECORD:

For Office of Disciplinary Counsel:

Pamela D. Bucy, Chief Disciplinary Counsel, Office of Disciplinary Counsel, Helena, Montana

For Respondent:

Colin M. Stephens, Stephens Brooke, P.C., Missoula, Montana

Decided: February 14, 2024

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion and Order of the Court.

¶1 On February 19, 2021, a formal disciplinary complaint was filed against Montana attorney Meghan Doud. An amended complaint was filed on February 23, 2021. The disciplinary complaint and amended complaint may be reviewed in the office of the Clerk of this Court by any interested person.

¶2 Doud has been licensed to practice law in Montana since 2006. She joined a law firm after graduation from law school. She left the firm approximately a year later, forming a partnership with her husband, who is also an attorney licensed to practice law in Montana. Doud's father, Timothy McKeon, who had been licensed to practice law in Montana since 1987, later joined the firm. In 2015, Doud's husband left the firm.

¶3 Doud and McKeon practiced under the firm name "McKeon Doud, P.C." The firm's main practice areas included personal injury, medical malpractice, and workers' compensation. The firm handled these cases on a contingency-fee basis.

¶4 In 2019, Dale Guccione, who had been one of McKeon's clients, filed a grievance against McKeon with the Office of Disciplinary Counsel (ODC). Although Guccione ultimately withdrew the grievance, in the course of investigating Guccione's grievance, ODC uncovered evidence that the firm was commingling or misappropriating client funds. ODC then broadened the scope of its investigation. Based upon its findings, ODC filed the disciplinary complaint and amended complaint at issue here.[1]

[1] ODC also filed a disciplinary complaint against McKeon. In August 2021, proceedings against McKeon were deferred as McKeon was transferred to disability/inactive status pursuant to MRLDE 28 after he asserted a disability that resulted in an inability to assist in his defense of the disciplinary proceedings.

¶5 In the February 23, 2021 Amended Complaint, ODC charged Doud with seven counts of professional misconduct. It alleged that she violated M. R. Pro. Cond. 1.15, 1.18, 8.4(b), and 8.4(c), for misappropriating and mishandling trust account funds; M. R. Pro. Cond. 1.15, 1.18 and 8.4(c), for commingling attorney funds with client funds; M. R. Pro. Cond. 1.5(a)-(c), 8.4(b), and 8.4(c), for charging unreasonable fees and costs to clients; M. R. Pro. Cond. 1.5(c), for failing to maintain signed fee agreements for contingency fee cases; M. R. Pro. Cond. 1.18(e), for failing to maintain the firm's trust accounts; M. R. Pro. Cond. 1.4 and 8.4(c), for failing to keep clients apprised of the status of their cases; and M. R. Pro. Cond. 5.1(c), for failing to exercise independent professional judgment and further research the firm's fee structure and collection of unreasonable fees and costs.

¶6 Doud, represented by legal counsel, answered the amended complaint on March 17, 2021. The Commission on Practice (Commission) ultimately heard the complaint on November 7 and 8, 2023. Both ODC and Doud, via counsel, questioned witnesses, offered exhibits, and made arguments before the Commission.

¶7 On December 12, 2023, the Commission submitted to this Court its Findings of Fact, Conclusions of Law and Recommendation for Discipline. Based upon its findings, it concluded that Doud had violated M. R. Pro. Cond. 1.4, 1.15(a), 1.15(b), 1.15(d), 1.18(c), 1.18(e), 1.5(a)-(c), 5.1(c), and 8.4(c), and recommended that she be disbarred from the practice of law in Montana. Doud filed objections, and the ODC responded to Doud's objections. The matter is now submitted for this Court's disposition.

¶8 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). We review matters of trial administration for abuse of discretion. *Blanton v. Dep't of Pub. HHS*, 2011 MT 110, ¶ 22, 360 Mont. 396, 255 P.3d 1229. "[D]espite our duty to weigh the evidence, we remain 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).

¶9 The Commission made extensive findings that we summarize as follows:

¶10 Doud was the sole authorized signatory on the firm's trust accounts and bore responsibility for monitoring trust account activity and abiding by trust account auditing requirements. She failed to maintain those accounts consistent with applicable rules and safeguards for the period from at least January 1, 2016, through March 31, 2020, during which time the firm transferred funds on an almost daily basis from its trust accounts to its operating account, other firm accounts, and Doud's and McKeon's personal accounts. The transferred amounts were almost always in even amounts that were not consistent with earned contingency fees or cost reimbursements related to a particular client's case.

¶11 Doud did not keep a ledger for the firm's trust accounts or separate cost ledgers for firm clients. She never reconciled the firm's trust accounts, checking accounts, or client settlement statements with the firm's bank statements. Her failure to properly maintain the

accounts meant that record-keeping errors went undetected and the misappropriation and commingling of client funds was concealed. The firm's trust accountings were "abysmally deficient" and distributions Doud routinely made from the firm's trust accounts violated trust requirements and the Montana Rules of Professional Conduct.

¶12 After ODC's investigator Sheena Broadwater uncovered evidence that the firm was commingling and misappropriating funds from its trust accounts, ODC staff member Marni Rhoa undertook a reconciliation of the firm's bank records. Rhoa reconciled each entry in the firm's bank statements to the ending balance each month from January 2016 through March 2020.

¶13 From this reconciliation, the Commission determined:

> As of March 31, 2020, based on its own records, the firm owed clients $238,016.66 and third parties $384,738.18, or a total of **$622,754.84**. However, these amounts include charges for staff employee time based on an hourly rate ranging from $120 to $175 per hour. If such employee costs are deducted, the amount owed to clients on that date was $531,449.86 and to third parties $834,683[.]33, or a total of ***$1,366,133.19***. Yet the [trust] account balance on that date was only **$44,331.01**. The ODC's reconciliation exhibits clearly establish the firm's [trust] account was routinely below the client funds that should have been on deposit.

(Emphasis in original; annotations removed.) The Commission noted other irregularities in the manner in which Doud handled the funds that came through the firm. For example, she deposited Guccione's settlement funds directly into the firm's operating account upon receipt. She also paid approximately $33,000 from the trust account to clients who had no funds in the trust account at the time she made those disbursements.

¶14 Doud also failed to pay some clients the funds to which they were entitled from settlements., and delayed paying other clients for up to two years after the firm received their settlement funds. The Commission set forth several examples of these delays or failure to make payments, noting that Doud admitted that the firm still owes client Marguerite Dempsey at least $47,326.45, even though Dempsey's settlement check was deposited in the firm's trust account in May 2016. In another instance, two settlement checks for client Sherrill Hennelly, totaling $1.2 million, were deposited in the firm's trust account in November 2017. The firm disbursed nothing to Hennelly until it sent Hennelly a check for $2,000 on December 13, 2018. It sent Hennelly six more checks for $2,000 each over the next ten months, making the last such payment on October 21, 2019. The firm did not execute a Settlement Statement until October 19, 2020, and it ultimately paid Hennelly only $14,000 out of her $1.2 million settlement.

¶15 In addition to the account irregularities, as part of its regular billing practices, the firm charged clients an hourly rate for services performed by the firm's employees. The Commission explained, "Characterizing its employees as independent contractors or consultants was a deceptive scheme designed to generate profits greater than the firm's contingent fee agreements allowed or are ethically permitted." The firm charged 10 of its clients for "medical consulting services" and at least 15 of its clients for "paralegal consultant services" when the billed services were provided by the firm's employees, who were compensated as employees and not as consultants or independent contractors, and where the firm's contingent fee agreements did not provide for the firm to include staff

time as a separately billed cost. These employees were office support staff; none were nurses or certified paralegals. The services they provided were largely tasks routinely performed in-house by law firms that handle plaintiff personal injury claims, such as preparing deposition summaries and medical chronologies. These employees did not record the time they spent on these tasks; Doud and McKeon fabricated the number of hours that appeared on clients' settlement statements as "costs" for which these clients were billed at a rate of $120 to $175 per hour.

¶16 The firm's practice of billing clients for staff time under the guise of "medical consulting services" and "paralegal consultant services" had "disastrous financial consequences" for those clients. Hennelly, who received only $14,000 of a $1.2 million settlement, was billed $387,935,80 for firm staff time.[2] As of March 31, 2020, the firm improperly billed 15 clients a total of $743,378.35 for services provided by the firm's employees.

¶17 Doud also knew of, and benefitted from, McKeon's practice of charging clients an additional contingency fee for negotiating liens and/or medical-related debt in disregard of the contingency fee agreement and applicable ethical obligations. In some instances, McKeon charged this additional contingency fee before undertaking such negotiation, expressing an intent to negotiate the debt later, and on the theory that the firm was entitled to take the fee up front because the firm would "eventually" earn it.

[2] The Commission further determined that Hennelly's trust account balance should contain $218,849.89 to address Medicare and Medicaid liens, but there are no funds in her account.

¶18 The firm also failed to keep clients apprised of the status of their respective cases, including failing to keep some clients informed of payments to medical providers and the status of cost expenditures. The firm never provided some clients with a breakdown of the cost expenditures on their cases.

¶19 The firm failed to obtain signed contingency fee agreements for some clients, and it was unable to produce signed contingency fee agreements for six clients. The firm did not consistently produce timely settlement statements. For example, McKeon negotiated four settlements for client "A.D." but did not produce settlement statements for three of these settlements and did not obtain A.D.'s signature on the fourth settlement statement. While the Commission believed McKeon caused many of the most egregious ethical violations, Doud was nonetheless aware of McKeon's actions. Although she occasionally challenged him on his practices, she did not take any steps to resolve the issues.

¶20 Based on these and other findings, the Commission concluded Doud violated M. R. Pro. Cond. 1.15(a), 1.15(b), 1.15(d), and 1.18(c), for misappropriating and mishandling client and firm funds. It further concluded she violated M. R. Pro. Cond. 8.4(c), because her conduct in commingling client funds with the firm's funds involved dishonesty, fraud, deceit, or misrepresentation. It concluded she violated M. R. Pro. Cond. 1.5(a)-(c) and 8.4(c), because the firm's fee agreements did not clearly notify its clients of the expenses for which the client would be liable and allowed certain charges without the client giving informed consent. It concluded Doud violated M. R. Pro. Cond. 1.5(c) because she could not produce signed fee agreements for some of the firm's clients; M. R. Pro. Cond. 1.18(e)

because she did not comply with the Trust Account Maintenance and Audit Requirements; M. R. Pro. Cond. 1.4 and 8.4(c) for failing to keep clients apprised of the status of their cases with regard to payments to medical providers and the status of cost expenditures; and M. R. Pro. Cond. 5.1(c) for failing to exercise independent professional judgment and further research the firm's fee structure and its collection of unreasonable fees and costs.

¶21 The Commission recommended Doud be disbarred from the practice of law, ordered to pay restitution or disgorge $1,366,133.19, and assessed the cost of these proceedings. The restitution or disgorgement amount represents improper staff costs, contingency fees for reduction of liens, and reimbursement due third parties, less credit for reimbursements Doud has already made.

¶22 The Commission found that Doud's failures to adhere to the Montana Rules of Professional Conduct were "egregious, numerous, occurred over a long period of time, affected a significant number of clients, and caused severe monetary and emotional damage to her clients that are incalculable in many ways." Her misconduct deprived some of the affected clients of the ability to live out the ends of their lives "with the care and dignity the settlement funds would have provided." In recommending disbarment, the Commission asserted that the scope and magnitude of Doud's ethical failures were "unequaled in the Commission's collective experience," and this case proved the most egregious and extensive trust violation and misappropriation/commingling case to ever come before it.

¶23 The Commission further considered, and provided its reasoning, for each of the relevant disciplinary criteria set forth in Rule 9B of the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE). It determined, in part, that Doud violated her duties to her firm's clients, the legal system, and the profession, her failures were "monumental in scope and extent," and she acted knowingly in violating these duties. It determined that most of the aggravating factors of MRLDE 9B(5) preponderated against Doud, as her misconduct was part of an unconscionable pattern that continued for years, she expressed no regret or remorse aside from a statement her counsel made at the conclusion of the disciplinary hearing, and she had sufficient practice experience to understand that the conduct she had engaged in was not just wrong but unconscionable. In mitigation, the Commission noted that Doud fully cooperated with ODC throughout its investigation and she reimbursed three clients; however, since Doud invoked her Fifth Amendment rights when called to testify, no evidence was presented as to any other mitigating factor.

¶24 Via counsel, Doud argues this Court should not adopt the Commission's Findings of Fact, Conclusions of Law and Recommendation because her due process rights were violated because of actions taken by her previous attorneys John Warren and Jacqueline Lenmark.

¶25 Warren and Lenmark represented both Doud and McKeon at the outset of this case, and were counsel of record for both Doud and McKeon when they filed responses to their respective complaints. Doud argues it was fundamentally unfair that the Commission relied upon admissions entered on her behalf because Warren and Lenmark "labored under

an actual and unwaivable conflict." Doud acknowledges she has no right to counsel in this disciplinary proceeding and thus no colorable ineffective assistance claim. She maintains, however, that this conflict violated her right to due process and the Commission erred when it denied her motion to reopen the scheduling order because it did not base its ruling upon due process grounds.

¶26 Doud argues Warren and Lenmark should have recognized that a conflict existed between herself and McKeon as his ethical violations were imputed to her. She complains that she alone bears the consequences for McKeon's actions since McKeon, upon Warren and Lenmark's advice, transferred his Bar status to inactive/disability status, thus suspending his disciplinary proceedings indefinitely. Doud asserts McKeon would "clearly" have been a witness against Doud and she "certainly" would have been a witness against McKeon at their respective disciplinary hearings, but for Warren and Lenmark achieving a favorable outcome for McKeon.

¶27 Doud suggests some ways in which she could have defended herself in this disciplinary matter but for counsel's alleged conflict. First, she alleges that some admissions Warren and Lenmark made in responding to Doud's amended complaint impaired her ability to defend herself in this matter. She alleges that she could have put forth mental state defenses, argued she was relying on advice of counsel, and argued that attorney-client privilege protected her communications with McKeon. She alleges that, like McKeon, she could have asserted an inability to assist in her defense but was precluded from doing so because of the alleged conflict. Doud argues that the Commission erred in

admitting the depositions of two of the firm's clients, because the depositions were taken on Doud's behalf by conflicted counsel.

¶28 ODC argues the general rule of M. R. Pro. Cond. 1.7(b) is that clients may consent to representation notwithstanding a conflict and Doud provides no support for her contention that any alleged conflict was not a waivable one. ODC points out that Doud specifically agreed to waive any conflict when she signed Warren and Lenmark's retainer agreement and that, as an attorney with over 13 years of experience, Doud was able to comprehend the potential for conflicts of interest that may arise with joint representation.

¶29 In *In re Best*, 2010 MT 59, ¶ 22, 355 Mont. 365, 229 P.3d 1201 (citations omitted), we explained, "We have stated previously in the context of a lawyer disciplinary proceeding that due process requires notice and an opportunity to be heard. In addition, due process requires a fair and impartial tribunal, and a fair hearing." ODC maintains Doud received notice of the charges, an opportunity to be heard, a fair and impartial tribunal, and a fair hearing, thus receiving the due process to which she is entitled in this disciplinary matter.

¶30 We agree with ODC that Doud received the process due her in this disciplinary proceeding. We fail to appreciate how the alleged conflict precluded her from taking actions she alleges she may have otherwise taken in this matter. Although Doud indicates dissatisfaction with some admissions made in her response to the amended complaint, she provides no explanation for how an alleged conflict dictated those admissions. The fact that McKeon transferred his Bar status to inactive/disability in no way affected Doud's

ability to do, or not do, the same. Doud does not explain how a conflict prevented her from offering mental state defenses or arguing she was relying on advice of counsel. She does not explain how the alleged conflict affected the depositions the Commission entered into evidence. Finally, her insistence that she and McKeon would have been witnesses against each other at their respective disciplinary hearings but for the conflict is belied by the fact that both were called to testify at Doud's disciplinary hearing, and both invoked their Fifth Amendment right against self-incrimination. Ultimately, Doud neither persuades us that a nonwaivable conflict existed nor that any alleged conflict affected her due process rights in any meaningful way.

¶31 In addition to her due process argument, Doud makes specific objections to the Commission's Findings of Fact, Conclusions of Law and Recommendation for Discipline.

¶32 First, she objects to the Commission's inclusion of an "Introduction" that she characterizes as a section "that may be the [Commission's] opinion [but] is neither fact nor law as determined by its actual findings and conclusions." Specifically, Doud objects to two sentences within the Introduction that she contends are unsupported assertions without corresponding findings: (1) "The facts found by the Commission reveal a prolonged and unconscionable practice of improper conduct in which vulnerable clients were deprived of significant amounts of their settlement." (2) "The conduct involved in this matter represents the most egregious and unconscionable trust account mismanagement and abusive billing practices the Commission has ever experienced."

¶33 We have held that a court's failure to state findings of fact and conclusions of law in the recommended form does not constitute substantial error so long as the court sets forth reasoning, based upon its findings and conclusions, in a manner sufficient to allow informed appellate review. *Snavely v. St. John*, 2006 MT 175, ¶ 11, 333 Mont. 16, 140 P.3d 492 (citations omitted). The Commission's inclusion of an introductory section has not impaired our ability to conduct an informed appellate review of its findings, conclusions, and recommendation. Moreover, the passages to which Doud takes issue are largely reiterated by the Commission in the Recommendation section, where it explains its rationale for its recommendation of disbarment. The Commission's inclusion of an introductory passage does not render its findings, conclusions, or recommendation infirm.

¶34 Doud next objects to three findings of fact. First, she objects to the inclusion of facts that she admitted in her response on the due process basis we have already rejected. Next, she objects to two findings which arose from Rhoa's rebuttal testimony. In the first, the Commission found that no witness testified "Rhoa's reconciliations were incorrect." Doud does not assert that any witness testified to the contrary, but rather complains that Rhoa's testimony was halted by the Commission Chairman before Rhoa could "adequately explain." In the second, the Commission found that client Dempsey was double-charged. Doud generally objects to this finding and cites Rhoa's rebuttal testimony as the basis for her objection.

¶35 In response to Doud's objections, ODC asserts that the Chairman halted the questioning because the Adjudicatory Panel understood Rhoa's testimony and because Doud had admitted that Dempsey had been double-charged.

¶36 We have reviewed the hearing transcript. To address Doud's objections, we scrutinized Rhoa's rebuttal testimony in particular. Rhoa and Doud's counsel engaged in extended colloquy concerning whether Dempsey, who loaned $70,000 to the firm, was properly credited for that loan after her case settled. While Doud's counsel attempted to convince Rhoa that the $70,000 loan was accounted for in the funds the firm later paid to Dempsey, Rhoa informed Doud's counsel that his math was wrong and she steadfastly maintained that position throughout a series of questions as to whether amounts were properly added and subtracted from various entries on a spreadsheet. After a time, the Chairman intervened and asserted that, to his recollection, the question as to whether Dempsey had been double-charged had been resolved in earlier testimony. ODC's counsel agreed; Doud's counsel stated that he could not recall. The Chairman then called an end to this line of questioning, to which Doud's counsel did not object.

¶37 Doud's disagreement with the finding that no witness testified that Rhoa's reconciliations were incorrect appears to be an argument that, had her counsel only been allowed to question Rhoa long enough, Rhoa would have ultimately disagreed with her own figures. However, when the Chairman ended that line of questioning, there was no indication that counsel's questions had caused Rhoa to doubt her calculations. There is no basis for this Court to question this finding.

¶38 As to the finding that Dempsey was double-charged, Doud offers no evidence to the contrary except to point to the entirety of Rhoa's rebuttal testimony, in which Rhoa repeatedly advised Doud's counsel that he was incorrectly calculating the funds going into, and coming out of, Dempsey's account.

¶39 Having undertaken de novo review of the findings, in accordance with our standard of review, we do not disturb the findings of fact the Commission has made in this matter. *In re Neuhardt*, ¶ 16.

¶40 Doud objects to two Conclusions of Law. First, she argues the Commission erred in concluding she violated M. R. Pro. Cond. 8.4(c) by misappropriating and mishandling trust account funds. Rule 8.4(c) provides, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Doud argues ODC did not prove she had the requisite mental state to violate Rule 8.4(c) when she acted in regard to the trust account funds because ODC did not prove she "acted with a mental state beyond negligence." She maintains the only basis for this conclusion are "admissions made on her behalf by conflicted Counsel."

¶41 ODC responds that ample evidence in the record supports this conclusion of law. It argues that Doud's actions clearly demonstrate that her mental state was more than negligent, as she commingled and failed to safeguard client funds in clear violation of other rules, and it is axiomatic that an attorney cannot take or use client funds for his or her own purposes. ODC points out that it is undisputed that Doud was responsible for managing the firm's accounts and that her actions included "transferr[ing] literally thousands of

dollars in large, even amounts, not reflective of any type of fee agreement, for literally years at a time." In addition to the delay in paying clients their settlement funds and inappropriately charging clients for staff time as a cost, ODC notes that Doud further misappropriated over $500,000, as ODC's reconciliation determined that, as of March 31, 2020, the firm owed clients and third parties $622,754.84, exclusive of the disputed amounts charged for staff time, but its trust account balance was only $44,331.01.

¶42 Neither Doud nor ODC provide any Montana cases in which the Commission or this Court considered whether M. R. Pro. Cond. 8.4(c) requires "a mental state beyond negligence," although Doud offers case law from other jurisdictions with a similar rule. In the present case, we need not determine whether negligence alone is sufficient to violate Rule 8.4(c) as we are not persuaded by Doud's argument that she merely acted negligently in light of the substantial evidence to the contrary.

¶43 Although Doud maintains that the Commission lacked evidence as to her mental state, she does not challenge the correlated findings, such as the finding that, on at least one occasion, she deposited a client's entire settlement check directly into the firm's operating account upon receipt. As further evidence that Doud's actions went beyond mere negligence, we note that Doud does not dispute the Commission's finding that she challenged McKeon on his practices, thus indicating that, even if she was reluctant to rectify the matter, she knew his actions were wrong. Although the Commission offered no reasoning within the conclusion itself, in considering the MRLDE 9B factors, it stated, "Doud acted knowingly. She knew, or at least questioned, that the billing practices were

not proper but took no steps to investigate or correct them, instead reaping the benefits by retaining money owed to the clients and third parties while depriving her own clients and others of funds due them."

¶44 Second, Doud challenges the Commission's third conclusion of law, where it determined she violated M. R. Pro. Cond. 1.5(a)-(c) and 8.4(c) because the firm charged some clients additional fees under the guise of "medical consulting services" and/or "paralegal consultant services" for work performed by the firm's support staff. In support of this conclusion, the Commission relied on *Precision Seed Cleaners v. Country Mut. Ins. Co.*, 976 F. Supp. 2d 1228, 1251 (D. Or. 2013), for the proposition that secretarial and clerical salaries and similar costs are office overhead that cannot be separately charged as it is factored into counsel's established hourly or contingency rate. The Commission also noted that the firm fabricated statements to justify deducting these "costs" from their clients' settlement proceeds as the firm's employees did not keep track of their time for performing these tasks and, although the Rules of Professional Conduct allow a lawyer to seek reimbursement for the cost of some in-house services, the lawyer may do so only if it is a reasonable amount that the client agreed to pay, in advance and in writing, or by charging an amount that reasonably reflects the cost incurred by the lawyer, neither of which occurred in this case.

¶45 Doud maintains that the tasks performed by the firm's employees, for which the firm billed its clients, included preparation of medical chronologies, which she argues is a task that "extends far beyond secretarial duties." She bases this argument on the testimony

of ODC's expert witness Randy Bishop, who testified, in part, that a "proper" medical chronology is "an itemized listing" that "has a date, an event, a column for who's the witness, and what documents," and that indicates what happened each day and, in some cases, might indicate what happened minute-by-minute. Doud avoids mentioning that Bishop further opined, unequivocally, "[C]harging a fee in addition to the contingency fee for preparing a chronology is wrong[.]" Doud also does not dispute that the employees who performed these tasks were not required to keep track of the hours spent on these tasks and offers no justification for the firm's fabricating the hours billed to clients for these tasks.

¶46 However, Doud maintains that the firm's fee agreements clearly explained that clients would be billed amounts in addition to the contingency fee for services performed by the firm's employees. She invites this Court to examine the firm's fee agreements in evidence and to compare and contrast them with the sample contingency fee Attorney-Client Fee Contract found in the *Lawyer's Deskbook*. *Lawyer's 2023 Deskbook & Directory* 294-95 (State Bar of Montana 2023).

¶47 In its response, ODC points out that in the admitted depositions, each client testified that their fee agreement did not provide them notice that they would be charged for staff time in addition to the attorney fee.

¶48 We have examined the sample contingency fee contract but fail to see its relevance here. As for the fee agreements from Doud's firm that she draws to our attention, their text does not support her argument that the agreements clearly informed clients that the firm

would bill them for tasks performed by the firm's employees. For example, the cost provision of Guccione's fee agreement states:

> **COSTS:** It may be necessary to incur costs in addition to the above described fee to properly handle Client's claim. ***Attorneys' fees do not include costs and are deducted after the above-mentioned attorneys' fees are calculated.*** These costs may include but are not limited to the following: Filing fees for the court; fees incurred for service of process upon parties; deposition expenses including court reporter's fees and production of transcripts; travel expenses; charges for obtaining medical records of the Client and other parties; charges for obtaining medical reports from doctors and health care practitioners; fees for expert medical witnesses and other experts; expenses of investigators, specialists, and experts; costs of photocopies, long distance phone calls, and parking expenses.

(Emphasis in original.) Dempsey's and Hennelly's fee agreements contain language almost identical to Guccione's. Absolutely nothing in the language of these agreements suggests that the client may be billed for the firm's staff time. Guccione's fee agreement states:

¶49 Doud has not persuaded us that the Commission's conclusions of law are incorrect. In a disciplinary matter, ODC has the burden to prove its allegations by clear and convincing evidence. MRLDE 22(B)–(C). That standard requires "that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue . . . be clearly established by a preponderance of the evidence or by a clear preponderance of proof." *Harding v. Savoy*, 2004 MT 280, ¶ 51, 323 Mont. 261, 100 P.3d 976 (citation omitted). Consistent with the Commission's findings and conclusions, we agree ODC has met its burden in this matter.

¶50 Therefore, for the reasons set forth above, we adopt the Commission's Findings of Fact and Conclusions of Law and hold that Doud violated M. R. Pro. Cond. 1.15(a), 1.15(b), 1.15(d), and 1.18(c) for misappropriating and mishandling client and firm funds; M. R. Pro. Cond. 8.4(c) because her conduct in commingling client funds with the firm's funds involved dishonesty, fraud, deceit, or misrepresentation; M. R. Pro. Cond. 1.5(a)-(c) and 8.4(c) because the firm's fee agreements did not clearly notify its clients of the expenses for which the client would be liable and allowed certain charges without the client giving informed consent; M. R. Pro. Cond. 1.5(c) because she could not produce signed fee agreements for some of the firm's clients; M. R. Pro. Cond. 1.18(e) because she did not comply with the Trust Account Maintenance and Audit Requirements; M. R. Pro. Cond. 1.4 and 8.4(c) for failing to keep clients apprised of the status of their cases with regard to payments to medical providers and the status of cost expenditures; and M. R. Pro. Cond. 5.1(c) for failing to exercise independent professional judgment and further research the firm's fee structure and its collection of unreasonable fees and costs.

¶51 As to the recommended discipline, Doud "vehemently" objects to the recommendation of disbarment on two grounds: First, she reiterates the due process argument that we rejected above. Second, she argues that the Commission erred by faulting her for not expressing remorse except for a statement her attorney made on her behalf at the conclusion of the disciplinary hearing. Doud argues that the Commission also compounded this alleged error by noting that Doud was "frequently observed making facial

expressions or exhibiting body language that demonstrated disdain for the witnesses and the charges" during the disciplinary hearing.

¶52 Doud argues that in criminal cases, we have held that a court cannot infer a lack of remorse from a defendant's silence. Doud relies on *State v. Shreves*, 2002 MT 333, 313 Mont. 252, 60 P.3d 991, which is not on point. In that case, the defendant maintained his innocence throughout trial and sentencing, and the sentencing court penalized Shreves for failing "to 'give' the court something about why the crime happened." *Shreves*, ¶ 20. We held that the sentencing court "improperly penalized Shreves for maintaining his innocence pursuant to his constitutional right to remain silent." *Shreves*, ¶ 20. However, we cautioned:

> In so holding, we make clear that the trial court can consider as a sentencing factor a defendant's lack of remorse as evidenced by any admissible statement made by the defendant pre-trial, at trial, or post-trial. Moreover, a defendant's lack of remorse may be gleaned, without more, from the manner of the commission of the offense as demonstrated by the evidence at trial or from other competent evidence properly admitted at the sentencing hearing.
>
> The rule of the case at bar is a narrow one and is grounded in the state and federal constitutional protections against self incrimination. It is simply this: a sentencing court may not draw a negative inference of lack of remorse from the defendant's silence at sentencing where he has maintained, throughout the proceedings, that he did not commit the offense of which he stands convicted—i.e. that he is actually innocent.

Shreves, ¶¶ 21-22. *Shreves's* narrow holding is inapplicable to this case. In part, Doud made pre-trial admissions, the Commission found the manner of the offense "egregious" and "unconscionable," and the Commission drew its inference not merely from silence.

¶53 The Commission further based its opinion that Doud lacked remorse or regret for her actions on her failure to accept accountability, as she blamed McKeon, her former counsel, the firm's clients, and ODC for her predicament. In her objection, she continues to do so, again complaining that her former counsels' actions prevented her from defending herself, the firm's clients failed to correctly interpret their fee agreements, and ODC improperly expanded its investigation of a withdrawn grievance. In the final argument of her objection, she asserts that disbarment is an extreme and excessive sanction "given that McKeon was the origin of most of the wrong-doing and the fact that he was her father." We find ample support for the Commission's opinion that Doud refused to acknowledge the wrongful nature of her conduct, an aggravating factor under MRLDE 9B(5)(f).

¶54 The Commission's rationale in recommending disbarment comports with the seriousness of the misconduct in the present matter, as demonstrated by its consideration of the disciplinary criteria of MRLDE 9B.

¶55 Based upon the foregoing,

¶56 IT IS ORDERED:

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

2. Meghan Doud is disbarred from the practice of law in Montana. As Doud has been suspended from the practice of law pending the outcome of this matter, her disbarment is effective immediately. Doud is directed to give notice of her disbarment as required by MRLDE 30.

3. Meghan Doud shall pay restitution or disgorge $1,366,133.19 pursuant to MRLDE 9C.

4. Meghan Doud shall pay the costs of these proceedings, subject to the provisions of MRLDE 9C 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 Meghan Doud, 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 14th day of February, 2024.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR

Justice Jim Rice has recused himself and did not participate in this matter.