

ORIGINAL

FILED

11/20/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 16-0714

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 16-0714

FILED

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE MATTER OF LINDA DEOLA,

An Attorney at Law,

ORDER

Respondent.

On November 29, 2016, the Office of Disciplinary Counsel (ODC) filed a formal disciplinary complaint with the Commission on Practice (Commission) against Montana attorney Linda Deola. The disciplinary complaint may be reviewed by any interested person in the office of the Clerk of this Court.

The ODC alleged four counts of misconduct against Deola arising out of Deola's representation of plaintiff Billie Redding in a lawsuit Redding filed concerning losses she incurred after her accountants advised her to invest in a company that soon went bankrupt. Deola became involved in the case after Richard Layne, an Oregon attorney, entered into an agreement with Deola to assist him in pursuing Redding's claims in Montana and to share attorney fees.

Deola filed a lawsuit on Redding's behalf in the First Judicial District Court, Lewis & Clark County. Deola was subsequently retained by five other clients with claims similar to Redding's. Because Deola and Layne had agreed to share any contingent fee in Redding's case, but Deola had no fee-sharing agreement on the other five clients, Deola's prospective contingent fee was higher for her five newer clients than for Redding.

Ultimately, Redding, Deola's five newer clients, and one individual represented by another attorney shared a global settlement of \$4.65 million, which was less than the

losses the claimants sustained. Each of the seven claimants received a distribution of settlement funds based on the claimant's pro rata share of the total amount invested.

After the settlement, Redding, represented by Deola, sued the insurer of the accounting firm for its handling of her claim. The suit was initially filed in state court but was removed to federal court. After the defendant insurer served discovery requests, the federal court disqualified Deola under the attorney witness rule. Deola's law partner, Brian Miller, then assumed representation.

After Deola's disqualification, certain documents were produced in response to the defendant's discovery requests that Deola had had in her possession but had not produced. Among these documents was certain e-mail correspondence and a spreadsheet enumerating what each claimant received from the global settlement.

From these alleged facts, the ODC accused Deola of violating the following Montana Rules of Professional Conduct: Rule 1.7 because there was a significant risk that her simultaneous representation of these six clients would be materially limited by her responsibilities to each client and by her personal interests; Rule 1.8(g) by failing to obtain informed consent in a signed writing from each client prior to participating in the aggregate settlement of the claims; Rule 1.4 by failing to timely and adequately inform Redding about Deola's representation of the other five claimants, the conflict of interest in this representation, and the ramifications of the global settlement and allocation of the proceeds; Rule 3.4(d) by failing to comply with discovery requests; Rule 1.1 by failing to provide Redding with competent representation; and Rule 1.3 by failing to act with reasonable diligence and promptness in representing Redding.

Deola tendered an admission and affidavit of consent pursuant to Rule 26(B)(3) of the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE), acknowledging that the material facts of the complaint were true and that if the case proceeded to a formal hearing, she could not successfully defend herself. Deola further stated, "I consent to a public censure by the Montana Supreme Court and suspension from the practice of law of zero to three months. I may present argument for no suspension and ODC may argue for a 90-day suspension. I understand that the commission has the discretion to decide what

term of suspension it will recommend to the Court, if any.” Deola further consented to assessment of costs pursuant to MRLDE 9(A)(8).

After the ODC concurred with Deola’s tendered admission, the Commission set the matter for hearing. Both Deola and the ODC filed recommendations for discipline, with Deola arguing for no suspension and the ODC arguing for a 90-day suspension.

The Commission heard the matter on July 25, 2019. After Deola testified, both parties presented additional arguments as to their recommendations for discipline.

On August 27, 2019, the Commission submitted to this Court its Recommendation in which it recommended that this Court accept Deola’s conditional admissions for violating M. R. Pro. Cond. 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), issue a public censure, suspend Deola from the practice of law for 90 days, and assess costs.

Shortly thereafter, Deola moved this Court for leave to submit an objection to the recommendation that she be suspended from the practice of law for 90 days. The ODC objected to Deola’s motion, arguing that respondents in disciplinary matters are not entitled to file objections to a Rule 26 tendered admission. After considering the parties’ respective arguments, we held that although Rule 26 does not expressly provide for a respondent to submit objections to a recommendation made within the agreed range of discipline, Deola reserved the right to do so within her Affidavit of Consent. Therefore, we granted Deola leave to file her objections and for the ODC to file a response. *In the Matter of Linda Deola*, No. PR 16-0714, Or. (Sept. 24, 2019). Those filings now received, we consider whether to accept the Commission’s Recommendation under MRLDE 26(A).

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). In the present case, the only disputed item is the recommendation for a 90-day suspension and the scope of our review is thus limited to that question.

Having thoroughly reviewed the pertinent portions¹ of the record, and having considered the disciplinary criteria enumerated in MRLDE 9(B), we have determined to accept the Commission's recommendation that Deola be suspended from the practice of law for 90 days. This suspension falls within the range of discipline agreed to by Deola in her Affidavit of Consent, and the facts to which she conditionally admitted support the imposition of this discipline.

Based upon the foregoing,

IT IS HEREBY ORDERED:

1. The Commission's Recommendation that we accept Deola's Rule 26 tendered admission is ACCEPTED and ADOPTED.

2. Linda Deola shall appear before this Court for a public censure to be administered in our Courtroom at 1:15 o'clock P.m. on DECEMBER 3, 2019.

3. Linda Deola is suspended from the practice of law in Montana for 90 days, effective thirty days from the date of this Order. Deola 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 MRLDE 30.

4. Deola shall pay the reasonable and necessary costs of these proceedings subject to the provisions of MRLDE 9(A)(8), allowing objections to be filed to the statement of costs.

5. Pursuant to MRLDE 26(D), the Clerk of this Court is directed to file a copy of Deola's Conditional Admission and Affidavit of Consent.

The Clerk of this Court is directed to serve a copy of this Order of Discipline upon counsel for Linda Deola, and to provide copies to Disciplinary Counsel, the Office

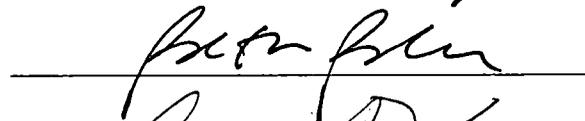
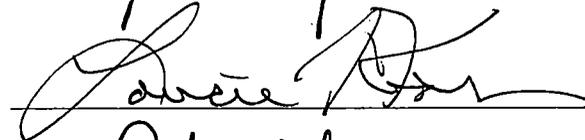
¹ This review included the complaint, Deola's affidavit of consent, Deola's and the ODC's respective recommendations for discipline filed with the Commission, the June 25, 2019 hearing transcript, the Recommendation, Deola's Objection to the Commission's Rule 26 Recommendation to the Supreme Court, and the ODC's Brief in Response to Respondent's Objection to the Commission's Rule 26 Recommendations to the Supreme Court.

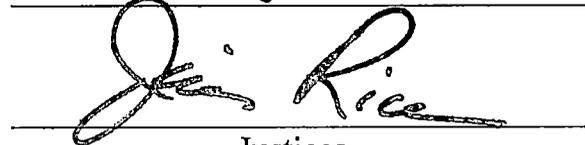
Administrator for the Commission on Practice, the Clerks of all the District Courts of the State of Montana, each District Court Judge in the State of Montana, the Clerk of the Federal District Court for the District of Montana, the Clerk of the Circuit Court of Appeals of the Ninth Circuit, and the Executive Director of the State Bar of Montana.

DATED this 14th day of November, 2019.


Chief Justice



Justices