

*Public Discipline Under the
Montana Rules of Professional Conduct*

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Introduction

The Office of Disciplinary Counsel (ODC) is part of a comprehensive lawyer regulation system established by the Montana Supreme Court. Effective July 1, 2002, the system consists of ODC and the Commission on Practice (COP). ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers that are within the jurisdiction of the Court.

The vast majority of the Montana Supreme Court's public disciplinary orders are not published, although they are public. As a consequence, researching prior disciplinary cases has been difficult. These annotations are an effort to compile all of the decisions since 1992 organized by the rules violated, along with some pre-1992 decisions where public disciplinary orders were located.

In preparing these annotations, ODC referred only to public decisions resulting in some form of public discipline. A fair number of public disciplinary orders resulting in "private" admonishments have not been included in these annotations in order to protect the private nature of the discipline, even though the discipline was in a "public" order. As a consequence, there are no annotations of private discipline cases.

Over the years, the Montana Rules of Professional Conduct have been amended – oftentimes, piecemeal. The rules as they appear in these annotations are the most recent version adopted in 2019 and made effective January 1, 2020.

The Clerk of the Montana Supreme Court has made disciplinary orders available on its online docket: <https://supremecourtdocket.mt.gov/PerceptiveJUDDocket/>. The website allows you to search the court's docket by name or case number.

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CLIENT- LAWYER RELATIONSHIP

Rule 1

RULE 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Failure to competently represent client's interests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The attorney filed the lawsuit, and the Oregon attorney submitted his *pro hac vice* application. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The attorney solely represented five claimants and jointly represented one claimant with the Oregon attorney; the seventh claimant was represented separately by another Montana attorney. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million, and all plaintiffs agreed to the global settlement offer to be distributed on a *pro rata* basis. By that time, the plaintiffs' claims varied in amount and risk. The attorney failed to provide her and her co-counsel's mutual client, who had the greatest amount of damages, with competent representation in violation of Rule 1.1, MRPC. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it recommended the Court approve the attorney's *Conditional Admission and Affidavit of Consent*, issue a public censure, impose a 90-day suspension, and order the attorney to pay costs of the disciplinary proceedings for this and other misconduct. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her from practicing law for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019)

Failure to competently pursue settlement of clients' personal injury claims. Attorney was hired by two clients to pursue their personal injury matter on a contingency fee basis. After months of no progress toward a settlement with the insurance company, the clients fired him. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the attorney failed to file an Answer and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding that based upon the admitted allegations in the Complaint, the attorney violated Rule 1.1, MRPC, by failing

to competently pursue his clients' personal injury matter. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be disbarred and ordered to pay costs. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC. *In re David S. Freedman*, MT PR 18-0516 (2019)

Failure to competently and diligently fulfill Trustee duties. Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. Two years later, the attorney left his law firm and Georgia and eventually re-located to Montana where he was also licensed to practice law. He failed to provide the Trust beneficiaries any future contact information or any information regarding the location or balance of the Trust. After her grandfather died, the beneficiary, who was of majority age, made several unsuccessful attempts to contact the attorney for three years until she finally located him and requested he pay her college tuition. He informed her he was no longer at his law firm and his life was in upheaval, but he would follow up with her. After he failed to do so, she made multiple unsuccessful attempts to contact him. He finally responded and advised his priority was his family and his wife's ill-health, but he would pay her tuition and for books; he failed to do so. He subsequently advised her he put all Trust assets in stocks and would liquidate them to pay her educational needs; he failed to do so. After he made several unfulfilled promises to pay her tuition and books, she was forced to withdraw from school. When she confronted the attorney about the value of the Trust, he stated he couldn't recall details of how the funds were expended but there was approximately \$200-300,000 remaining. He failed to provide her an accounting or deliver the Trust funds, as requested. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. The attorney's failure to distribute funds as required by the Trust violated Rules 1.1 and 1.3, MRPC. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred for his numerous, egregious, prolonged failures and his extreme dishonesty and breaches of duty. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019)

Failure to competently pursue informal probate for client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted she was hired and paid \$400 to informally probate an estate; however, for more than three years, she did not complete any work on the matter. Her client advised the attorney she made other arrangements to complete the probate and requested a refund of her retainer, which the attorney eventually did return. The attorney admitted violating Rule 1.1, MRPC, for failing to competently work on the probate. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, and 1.4,

MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Order re: Rule 26 Conditional Admission wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Mary Zemyan*, MT PR 18-0513 (2019).

Failure to file appeal and appear at hearing demonstrates incompetence. Attorney filed a civil lawsuit on his client's behalf, which was removed to federal court. Three years later, he filed a motion to withdraw as counsel, which the Court denied because he failed to follow local court rules. The attorney continued representing his client and appeared at a hearing on the defendants' motions for summary judgment, which the Court granted, and judgment was entered against his client. The attorney failed to appeal the order, as his client directed. The client filed a *pro se* Notice of Appeal and later filed a Motion for Extension of Time to File a Notice of Appeal. The appeals court remanded the matter to district court to allow the judge to rule on the motion for extension of time. The judge set the matter for hearing, but the attorney failed to appear, resulting in the Court's Order to Show Cause, directing him to personally appear and show cause why he should not be held in contempt, sanctioned, or otherwise respond. The attorney appeared at the hearing, at which the Court also addressed his client's motion for extension of time; the attorney had no valid justification for failing to timely file the appeal notice. After ODC filed its Complaint alleging violations of Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC, default was entered for the attorney's failure to file an Answer, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding the attorney's failure to file a Notice of Appeal and his failure to appear at the initial hearing on his client's motion for extension of time violated Rules 1.1, 1.2 and 1.3, MRPC. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be suspended from the practice of law for a period of not less than seven months and be ordered to pay costs of the disciplinary proceeding. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary hearing for violating Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC. *In re David S. Freedman*, MT PR 18-0034 (2018).

Failure to competently and diligently pursue client's personal injury claims. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting he violated several MRPC. The attorney represented his client in a personal injury case, pursued claims with an insurance carrier, and filed a lawsuit; however, the attorney admittedly failed to have the Complaint served upon the defendants, nearly resulting in the case's dismissal, in violation of Rules 1.1 and 1.3, MRPC. His client ultimately retained other counsel, who served the Complaint days prior to the statute of limitation expiring. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3 and 1.4, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Joshua Morigeau*, MT PR 18-0044 (2018).

Failure to competently represent client in litigation. Attorney was retained to pursue an appeal in a domestic relations case, which the Supreme Court ultimately dismissed for the attorney's failure to file an opening brief. He then filed an untimely Rule 60 motion for relief in district court and a motion to disqualify the district court judge for his alleged bias, which the Supreme Court denied. The attorney issued a subpoena and served it on the presiding district court judge to be deposed in connection with the Rule 60 motion. The judge subsequently issued an Opinion and Order, denying the Rule 60 motion, quashing the subpoena, and ordering the attorney to appear and show cause why his conduct did not violate Rule 11, M.R.Civ.P. The judge also opined the attorney's factual contentions had no evidentiary support, were not warranted by existing law, and most were not supported by argument. After the show cause hearing, the judge issued his findings, conclusions, and sanctions order, determining the attorney's testimony was not credible; he failed to adequately review the record; he failed to determine whether the factual contentions in his motion had evidentiary support; and his adamance in maintaining the contentions were factual and evidentiarily supported was highly troubling. The judge further held the attorney failed to research his legal contentions, which were not supported by legal authority; failed to make good faith legal arguments; used highly inflammatory language to make baseless accusations of conspiracy, fraud, bias, unethical behavior and illegal acts against numerous people, including the judge; filed his motion to harass the adverse party, her attorneys, witnesses, the Court and court staff; asserted baseless factual contentions impugning the Court's integrity and made baseless assertions against adverse counsel with reckless disregard for their truth or falsity. The Montana Supreme Court affirmed the Sanctions Order, and the attorney paid the \$10,000 sanction. After a formal hearing, COP concluded the attorney's failure to competently represent his client violated Rule 1.1, MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted and indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 3.1(a), 3.5(c), 8.2(a), and 8.4(d), MRPC. *In re Robert C. Myers*, MT PR 16-0245 (2017).

Failure to competently represent client's interests. Attorney represented the Montana Public Employees Association (MPEA) for several years. He advised the City of Whitefish that MPEA was going to pursue an appeal through the grievance process on behalf of a collective bargaining unit member. When MPEA's executive director inquired about the status, the attorney repeatedly made false representations and assurances the matter was progressing. He falsely advised he would file a lawsuit compelling the City to participate in the grievance process; however, the grievant already filed suit against the City and MPEA. He falsely advised he filed a motion to dismiss MPEA from the grievant's lawsuit and assured he was defending MPEA in court and would prevail. MPEA fired the attorney after determining he had abandoned any defense and had repeatedly deceived MPEA and the grievant. After ODC filed a formal complaint, the attorney failed to file an Answer, deeming all allegations admitted. After a hearing, COP found the attorney failed to represent MPEA through his gross negligence and misconduct, failed to properly and timely handle the grievant's matter, failed to respond to discovery requests, failed to appear to represent MPEA's interest at oral argument on the grievant's motion for summary judgment effectively conceding to liability, failed to serve discovery requests on any party, take any depositions or file any motions. The grievant was awarded a substantial damage judgment against MPEA, and MPEA filed for post-judgment

relief, citing the attorney's gross neglect and misconduct. COP concluded the attorney violated Rule 1.1, MRPC, by failing to provide competent representation to MPEA or the collective bargaining unit member. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b) and 8.4(c), MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended the attorney for a period of not less than 7 months and ordered him to pay the costs of the disciplinary proceedings. *In re Carter Picotte*, MT PR 16-0446 (2017).

Failure to competently represent client. Attorney represented the Montana Public Employees Association (MPEA) for several years. In handling a grievance filed against the City of Bozeman, he notified the City of the grievant's choice to arbitrate but failed to request a list of arbitrators from the Montana Board of Personnel Appeal as required by the collective bargaining agreement between the City and the MPEA. The attorney failed to timely handle the matter resulting in delayed prosecution for approximately six years. His lack of diligence resulted the District Court's review and adverse decision and an ultimate appeal to the Montana Supreme Court. The attorney had also failed to respond to discovery, failed to answer Admissions and failed to appoint an arbitrator and proceed to arbitration within a reasonable period of time. At the formal hearing before the Commission on Practice, the attorney admitted he failed to represent his client, MPEA, diligently and further admitted he was dishonest with MPEA and the grievant and misrepresented the facts. After the formal hearing, COP concluded the attorney violated Rule 1.1, MRPC, for his failure to handle the matter competently. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 4.1, and 8.4, MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended the attorney for a period of not less than 7 months and ordered him to pay the costs of the disciplinary proceedings. *In re Carter Picotte*, MT PR 16-0319 (2017).

Failure to competently represent client's interest in quiet title action. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted that while representing a client in a quiet title action, he failed to advise him of a scheduled mediation, a pending motion for summary judgment filed by opposing counsel, a subsequent hearing on that motion, and a subsequent adverse ruling on the motion. The attorney also admitted he failed to advise his client of the opposing party's settlement offer and of an appeal filed. He admitted he failed to competently represent his client's interests in violation of Rule 1.1, MRPC. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC, the Montana Supreme Court ordered the attorney be publicly censured and pay the costs of the disciplinary proceedings. *In re Jack Morris*, MT PR 16-0265 (2017).

Failure to file divorce proceedings; failure to file informal probate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a

formal complaint, admitting several violations of the MRPC in relation to two separate matters. He admitted violating Rule 1.1, MRPC, by failing to pursue divorce proceedings on behalf of one client and failing to initiate probate proceedings on behalf of a second client until after receiving his client's ODC grievance. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. For violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC, the Montana Supreme Court ordered the attorney be publicly censured and be placed on probation for two years, subject to conditions, and pay costs of the disciplinary proceedings. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to competently represent clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating Rule 1.1 in one case for failing to adequately respond to discovery requests and to opposing counsel's multiple attempts to obtain supplemental responses, resulting in sanctions against his client, striking several claims for past and future damages. He admitted to violating Rule 1.1 in another case for failing to pursue his client's medical malpractice and product liability lawsuit after assuming representation and obtaining an unfavorable expert opinion report, resulting in dismissal of the lawsuit with prejudice. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured and pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC. *In re David S. Freedman*, MT PR 16-0239 (2016).

Failure to notify client of appeal denial and subsequent imposition of sentence. Attorney was retained as substitute counsel in criminal DUI case and filed successful motions to quash a bench warrant and to continue sentencing. He further negotiated a *nolo contendere* plea for a suspended sentence to be stayed pending appeal of the lower court's denial of the motions to suppress and dismiss filed by his client's previous counsel. The appeal was unsuccessful, and the case remanded to the lower court for imposition of sentence. The attorney failed to advise his client the court denied his appeal and his sentenced would be imposed. As a result, his client failed to comply with the Sentencing Judgment, an arrest warrant was issued, and eighteen months later, his client was arrested. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 1.4, MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from practicing law for a period of seven (7) months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Brian Kohn*, MT PR 15-0626 (2016).

Lack of competence in creating a trust. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1 and 1.7, MRPC, in relation to her joint representation of three individuals in the creation of a trust, one of whom

was her daughter-in-law. Her three clients co-owned certain real property. Her client with a 50% ownership in the property retained her to prepare a prenuptial agreement. Thereafter, the attorney prepared an irrevocable trust for the real property on behalf of her three clients, naming them equal 33.33% beneficiaries, but requiring her pre-nup client to pay all mortgage payments, taxes, insurance, and upkeep of the property. The attorney was unaware at the time of the parties' Right of First Refusal and failed to advise her three clients of the potential tax implications. She admitted violating Rule 1.1 by failing to provide her clients competent representation regarding the clients' options for protecting the real property. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order Imposing Discipline wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered her to be publicly admonished by COP in writing and to pay costs of the disciplinary proceedings for violating Rules 1.1 and 1.7, MRPC. *In re Judith Peasley*, MT PR 15-0623 (2016).

Failure to follow proper procedures while representing clients before POST Council. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. Specifically, he admitted that while representing two clients in their cases before the Peace Officers Standards and Training ("POST") Council, he failed to follow applicable Rules of Procedure as ordered by the hearing examiner without lodging proper objections thereto, failed to meet required deadlines or appear at scheduled proceedings, failed to abide by pre-hearing discovery procedures, and failed to comply with the hearing examiner's orders and respond properly to discovery requests. He further failed to seek judicial review of the POST Council or Board of Crime Patrol's respective decisions regarding one client at his client's direction. He did request judicial review in his second client's matter, but he failed to serve it, as instructed by his client. Ultimately, one client's POST certificate was permanently revoked, and the other client's POST certificate was suspended for 15 years. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the Commission and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. *In re Edward G. Chester*, MT PR 14-0475 (2015).

Failure to competently represent client in criminal case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.1 by failing to provide competent representation to a client in connection with his criminal distribution of dangerous drugs charges. He failed to provide discovery to his client, failed to respond to his client's inquiries or meet with him, failed to communicate the State's plea offer to his client and did nothing further on his case until he filed a motion to continue and motion to withdraw from representation. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Montana Supreme Court ordered the attorney receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with conditions

for violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to competently represent client in post-conviction proceedings. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief, failed to notify his client that he did not intend to pursue his post-conviction relief petition, and failed to advise him of the applicable deadlines. After a formal hearing, COP concluded the attorney's conduct violated Rule 1.1, MRPC, among others. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Supreme Court accepted and adopted and suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c), and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Failure to competently handle post-conviction proceedings. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, wherein she admitted the facts as alleged in the Complaint and to violating Rule 1.1, MRPC. The attorney was retained to file a writ of habeas corpus petition following her client's conviction and direct appeal of a federal sexual assault charge. In the petition, the attorney alleged ineffective assistance of counsel by her client's trial and appellate attorneys. She billed against the \$15,000 retainer at an hourly rate. The attorney lodged three unsigned expert and factual declarations in support of the Petition, which were stricken from the record, and consequently, four of the six remaining claims were dismissed. She subsequently failed to subpoena the victim's statement or advise the court if no statement had been obtained, as directed. As a result, the two remaining claims were dismissed and a certificate of appealability was denied and affirmed by the Ninth Circuit Court of Appeals. The attorney referred the matter to her malpractice carrier and refunded the retainer despite the substantial work she performed. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's Conditional Admission and Affidavit of Consent and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Penelope Strong*, MT PR 13-0504 (2014).

Failure to competently act as closing/escrow agent. Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed

to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him. ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 14-0055 and PR 14-0245 (2014).

Failure to file lawsuit or pursue litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC. Specifically, he admitted he was retained to assist a client with the dissolution of her joint investment of real property with her former boyfriend. She invested approximately \$14,000 in the property and was seeking her portion of the equity. The attorney sent a demand letter with a draft Complaint and Demand for Jury Trial that would be filed in 10 days if no resolution was reached. Negotiations were unsuccessful, and the attorney advised his client he would file the Complaint. Four months later, he emailed his client advising her the Complaint had been filed and would be served that week. Nearly three years later, he admitted to her that the Complaint had not been filed and subsequently sent her a full refund, plus 10% interest, totaling \$1,612.50. He was unable to locate her physical file. He neglected to provide her with reasonable communications and failed to advise her about the status of the Complaint or his failure to institute litigation. He misrepresented to her that he had filed the Complaint. No discovery or further case preparation had occurred. Following a Rule 26 hearing, COP issued its Order of Discipline, which included its Findings of Fact and Conclusions of Law. For violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC, COP ordered the attorney be publicly admonished by the COP, be placed on probation for two years, subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Scott Hilderman*, MT PR 13-0713 (2014).

Failure to respond to discovery requests and motion to compel; failure to timely assert and/or file claims. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP

after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC. Specifically, he admitted he failed to respond to defense counsel's discovery requests in relation to the lawsuit he filed on his client's behalf to pursue damages caused by a motor vehicle accident. He subsequently failed to respond to defense counsel's motion to compel discovery responses, resulting in his client being ordered to pay \$875 for defendant's attorney fees and costs and deeming the requests for admission admitted. The attorney subsequently served defense counsel with his client's unsigned discovery responses to the remaining discovery requests. He failed to respond to defense counsel's second discovery requests. He did not bring a claim against the estate for the at-fault driver within one year after his death, as required by statute. For over five years, during the representation, the attorney failed to conduct any discovery, failed to bring a derivative claim on behalf of his client's wife, failed to assert a claim for underinsured motorist benefits, failed to keep his client informed about the status and/or existence of the discovery requests, did not always respond to his client's inquiries about the status of his case, and failed to advise his client about the Order to Compel and resulting sanctions. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for two years, subject to specific terms and conditions, pay \$875 plus interest in restitution to his former client, and pay the costs of the disciplinary proceedings. *In re Jeffrey L. Sutton*, MT PR 13-0069 (2014).

Lack of competence. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to timely file appellate brief; failure to respond to motion to dismiss appeal. Attorney, who had previously resigned from the practice of law and was subsequently suspended for an

indefinite period of not less than seven months, moved to dismiss the formal complaint for lack of jurisdiction. The Supreme Court denied the motion. The attorney failed to file an Answer to the formal complaint ODC filed against him; therefore, all allegations were deemed admitted. The complaint alleges, during his representation of a defendant in a lawsuit, the attorney failed to file an opening appeal brief after filing a notice of appeal of a summary judgment award to the Supreme Court. Summary judgment had been granted against his client for nearly \$108,000. The attorney failed to respond to the opposing party's motion to dismiss for failure to file an appeal brief, and the appeal was dismissed. He failed to keep his client informed and to respond to his inquiries. He failed to deliver a copy of his client's file to his new counsel, and he failed to respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16, and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel Moss*, MT PR 12-0656 (2013).

Failure to file revised appeal brief and to respond to motion to dismiss. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure to comply with mediation requirements; failure to file opening appeal brief; filing frivolous motions; failure to respond to motion for sanctions; failure to appear at court hearing. Attorney was hired to represent his client in dissolution proceedings. The district court entered its decree, and the attorney filed a notice of appeal but failed to comply with the mandatory mediation requirements, failed to submit his client's position statement to the mediator, and failed to file an appeal brief. The Supreme Court dismissed the appeal. The client's ex-wife filed several motions with the district court, including one for sanctions, for failure to comply with court orders. The attorney filed a response, which the client's ex-wife argued had no factual or legal basis and sought sanctions. The attorney did not respond. The attorney did not notify his client of the court's hearing on the motions, nor did he appear at the hearing. The client was found in contempt and was ordered to pay his ex-wife's additional attorney fees, subject to his right to object. The attorney did not file objections, and the court entered judgment of \$3,870.33 against his client. The client hired other counsel. A formal complaint was filed, the attorney defaulted, and all allegations of the complaint were deemed admitted. The attorney voluntarily surrendered his license to practice. His license was already indefinitely suspended for his conduct in another matter. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 3.1, and 3.2, MRPC. The COP recommended the attorney be disbarred and assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 12-0448 (2013).

Misrepresentation of role in lawsuit; failure to correct misrepresentation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

Filing incomplete or inaccurate bankruptcy documents; failure to respond to summary judgment motion. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3 and 1.4, MRPC. Specifically, he admitted that, during his representation of clients in three separate bankruptcy matters, he filed inaccurate or

incomplete bankruptcy schedules, statements of financial affairs or other bankruptcy documents and neglected to file a Statement of Genuine Issues in opposition to a motion for summary judgment. He also admitted failing to keep his clients reasonably informed about the status of their bankruptcy proceeding or to explain the matter to the extent reasonably necessary to permit them to make informed decisions regarding his representation. By his conduct, he violated Rules 1.1, 1.3 and 1.4, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of two years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re S. Charles Sprinkle*, MT PR 12-0274 (2013).

Failure to respond to discovery requests; failure to respond to motion to compel. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained by the personal representative of an estate to handle the probate of a contested will. The contesting party served the attorney with its first set of discovery requests, to which he failed to respond, despite his client's numerous letters reminding him to do so. A motion to compel was filed, to which the attorney also failed to respond. Thereafter, his client terminated his representation, and the district court issued an order compelling her to respond to the discovery requests. The attorney admitted that, should this matter proceed to a contested hearing, he could not successfully defend himself against charges that: in violation of Rule 1.1, MRPC, he failed to competently represent his client; in violation of Rule 1.3, MRPC, he failed to act with reasonable diligence and promptness in representing his client; in violation of Rule 3.4(d), MRPC, he failed to make a reasonably diligent effort to comply with a legally proper discovery request(s) by an opposing party; in violation of Rule 1.4, MRPC, he did not promptly reply to his client's reasonable requests for information and/or failed to keep his client reasonably informed about the status of the matter; in violation of Rule 1.5(b), MRPC, he failed to communicate in writing the scope of his representation and the basis or rate of his fees and expenses for which his client would be responsible, before or within a reasonable time after commencing the representation. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re Stephen H. Dalby*, MT PR 12-0059 (2013).

Failure to act competently; failure to appear at hearings. (Reciprocal Discipline) The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case,

the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for “Ethics School,” and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O’Neil reviewed and accepted the attorney’s Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Failure to act. Attorney represented his clients regarding a claim against the Town of Superior for damage to their property as a result of a leak in their water service provided by the Town. The attorney filed a lawsuit against the Town, and opposing counsel filed four motions. The attorney did not oppose or respond to the motions nor did he request a hearing, reasoning that the motions were meritorious and there were no facts or law by which he could in good faith oppose them. He failed to advise his clients of the same, and he did not discuss with them other ways in which they could proceed, including stipulating to dismiss the lawsuit or seeking settlement. The attorney did not have a written attorney-client fee agreement signed by the clients. The Court ultimately granted the unopposed motions and dismissed the case with prejudice. The Court also ordered the attorney’s clients to pay the Town nearly \$5,000 in costs after the Town filed its Bill of Costs and Affidavit. The attorney did not object to the Town’s Bill of Costs nor did he discuss it with his clients, and judgment was entered against them. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, and 1.4, MRPC. The COP recommended the attorney be admonished by the COP, be placed on probation until the lien against his clients is satisfied but within 120 days, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP’s Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Richard R. Buley*, MT PR 11-0603 (2012).

Failure to act competently and diligently. Attorney represented his clients regarding their claim against the Montana Department of Natural Resources and Conservation for its negligent fire suppression activities, causing damage and destroying much of the timber and grazing land on their ranch. The attorney filed the lawsuit, engaged in discovery, and hired an expert. However, two years later, he ceased working on his clients’ matter, and his communication with his clients was infrequent. The attorney left the law firm where he was employed and took the clients with him. His lack of action and lack of communication continued. After six years of inaction, opposing counsel wrote the attorney and his prior law firm and suggested the case be dismissed due to the inactivity. The clients subsequently elected to have the attorney’s prior law firm represent them. New counsel tried the case and recovered a substantial verdict against the State for the clients. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 3.2, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP’s Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel L. Moss*, MT PR 11-0623 (2012).

Failure to act competently. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. The attorney admitted to struggles with depression and alcoholism and she should have referred her client to other counsel. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 12-0196 (2012).

Failure to act. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably

informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re F. Ron Newbury*, MT PR 10-0617 (2012).

Failure to provide competent representation. Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a

bankruptcy petition on his client's behalf. He was not familiar with the bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings for violating Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Failure to act. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than six months, be placed on probation, during which she must

comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 10-0428 (2011).

Failure to act. Attorney was retained to assist his client with a violation of a Restraining Order or Order of Protection, involving the client's ex-wife and minor children. He was also later hired to assist his client in obtaining visitation and contact rights concerning his minor children. After the client's ex-wife died, her brother and his wife petitioned to be appointed co-guardians and co-conservators for the children. The attorney contacted opposing counsel prior to the guardianship hearing to advise that there would be no objection to the guardianship, and the petitions were granted. The attorney subsequently filed proposed parenting plans with the district court. Despite notification by the clerk of court that a motion or petition is required to be filed along with the proposed plans, he failed to do so. He did nothing further to assist his client to obtain visitation or contact rights regarding his minor children. The attorney failed to respond to an informal complaint filed against him with the ODC, despite ODC's two requests for a response. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, and failure to respond to disciplinary inquiries. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 8.1(b), MRPC. The COP recommended the attorney be publicly censured by the Court, be placed on probation for two years, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and publicly censured the attorney, placed him on probation for two years, subject to certain terms and conditions, and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 09-0224 (2011).

Failure to act. Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law

and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Failure to act. Attorney was disciplined for his conduct relating to two separate matters. In the first matter, the attorney was hired to assist a client in a wrongful death claim arising out of North Dakota. The attorney arranged for a North Dakota law firm to handle the matter and requested his client pay him \$3,700 to be used for litigation costs incurred by the North Dakota firm, which the client paid. The client subsequently hired the attorney to defend him in a lawsuit filed against him for money allegedly owed to the plaintiffs. The attorney appeared on his client's behalf, but there was no evidence that he took any further action in the matter. After the client terminated the attorney's representation in both cases, he, as well as his new attorney, requested his files, original documents, and a refund of the remaining funds deposited into the attorney's trust account. More than four months later, the attorney transferred the remainder of the funds in the amount of \$2,200 to his former client's new attorney, but he never provided an accounting of the money. The attorney failed to pay the North Dakota firm for expenses invoiced to his client relating to the wrongful death lawsuit. He recalled paying an expert witness fee of \$1,500 from his trust account, which led him to the \$2,200 refund; however, he had no record to evidence the payment. In the second matter, the attorney was hired to defend a client who was charged with felony Driving Under the Influence (DUI). The attorney filed a Motion to Suppress or Dismiss the charge but failed to timely file a brief in support of the motion even after requesting an extension to do so. As a result, the district court denied his Motion. He failed to inform his client of the reasons the Motion was denied. His client ultimately learned of the denial after receiving notice from the court. His client later learned that the Motion was denied because his brief was untimely filed. The attorney filed a questionable Petition for Writ of Supervisory Control with the Montana Supreme Court. He told his client to plead guilty to felony DUI because he could not win the case, but after retaining new counsel, the client pled guilty to a lesser offense. The ODC filed a formal complaint alleging the attorney violated the Rules of Professional Conduct in three separate matters; however, the COP determined that clear and convincing evidence only existed to prove violations in two of the matters. In the first matter, ODC alleged the attorney failed to keep his client reasonably informed about the status of his matters and did not respond to his client's reasonable requests for information in violation of Rule 1.4. After termination of his representation, the attorney failed to timely deliver funds, files, and documents to his client or his client's new attorney in violation of Rule 1.16(d). In the second matter, ODC alleged he failed to provide his client with competent representation regarding the DUI charges filed against his client in violation of Rule 1.1, and he failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.16(d), MRPC. The COP recommended the attorney be publicly censured by the Supreme Court and be assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to appear before the Court for a public censure and to

pay the costs of the disciplinary proceedings. *In re Solomon S. Neuhardt*, MT PR 09-0621 (2011).

Failure to act. Attorney was retained by his client to handle an ancillary probate matter wherein the title to certain mineral rights needed to be transferred to the heirs of the estate. The attorney advised his client that the ancillary probate could be opened and closed in a matter of days. His client sent him \$1,500 and the necessary documents to commence the probate. The attorney never provided his client with a written fee agreement, or anything in writing, setting forth the scope of his representation and the basis or rate of his fee. He did not deposit the \$1,500 into a trust account. The attorney failed to respond to his client's letters and failed to return her calls. He failed to update her about the status of her matter, failed to comply with her requests for information, and failed to send her any probate documents. He failed to file any pleadings and failed to open an ancillary probate to effect transfer of the mineral rights. The attorney eventually refunded his client the \$1,500 after multiple requests from her and several promises to do so. He did not complete the work that he was hired to do. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence, failure to promptly reply to his client's requests for information and/or keep her informed about the status of the matter, failure to communicate the scope of representation and the basis or rate of the fee and expenses within a reasonable time after commencing the representation, failure to deposit the retainer into his trust account, and taking fees before they were earned. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.5(b), MRPC. The COP recommended the attorney receive a private admonition to be administered by the COP, be placed on probation for two years, and assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, be placed on probation for two years, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 10-0411 (2011).

Failure to act. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Failure to act. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the

following. The attorney was retained on a contingency fee basis to pursue his client's damages related to a personal injury. After filing the Complaint, the attorney did not serve the defendant within the required three-year timeframe. As a result, the case was dismissed. The attorney was retained by the same client to defend him against a construction lien filed on his property. After his motion to dismiss was denied, the attorney failed to file an Answer, and default was entered against his client. After filing a Motion to Set Aside Default, the attorney was given another opportunity to file an Answer. The plaintiff made an offer to settle, which the attorney failed to convey to his client. Default Judgment was entered shortly thereafter. The attorney filed a Notice of Appeal with the Montana Supreme Court but failed to file an opening brief, and the appeal was dismissed. Attorney's fees were awarded to the plaintiff, and Judgment was entered against the client for the fees with interest accruing. The attorney appealed the Judgment then made a settlement offer to the plaintiff's attorney. The plaintiff rejected and made a counteroffer. The attorney paid the plaintiff the amount of the counteroffer from his own funds and dismissed the appeal. The formal complaint alleges violations of Rules 1.1, 1.2, 1.3, 1.4 and 3.2, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure and to pay costs of the disciplinary proceedings. *In re Karl P. Seel*, MT PR 09-0612 (2010).

Failure to act; failure to prosecute claim; failure to timely file appeal brief. Attorney was retained to represent a client regarding a personal injury claim; the client paid him a \$6,000 retainer. Three years later, the District Court issued an Order to Show Cause Why Case Should Not Be Dismissed. After the Clerk of Court sent a copy of the Order to the attorney's office, it was returned as non-deliverable. The attorney failed to notify the Court of his change of address. The Court subsequently dismissed the action for failure to prosecute. The dismissal order was sent to the attorney at the same address and was not returned. The attorney later contacted opposing counsel and at that time learned of the Order of dismissal. He advised that he would be filing a motion to reinstate the action. Two years later, he filed the motion. A hearing was held, and the Court denied the Motion to Reinstate Claim. The attorney filed a Notice of Appeal, which was dismissed because he did not timely file an opening brief. The client requested the original or a copy of the file; the attorney failed to comply and failed to account for the retainer the client paid him. The attorney failed to respond to the informal complaint filed against him with the ODC despite ODC's two requests for a response. In a second matter, the attorney also failed to respond to ODC's two requests for a response. The attorney failed to file an Answer to the formal complaint ODC filed against him. A default hearing was held before the COP, and the attorney appeared at the hearing. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for 30 days and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re R. Allen Beck*, MT PR 09-0227 (2009).

Failure to act. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs

for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to file a response brief as ordered by the Court. Attorney was retained to defend a client in a lawsuit filed against her by her former landlord for damages to a rental property. At trial, the Court directed counsel to file briefs regarding the lease at issue. The attorney failed to file a brief or to respond to the Plaintiff's brief. The Court awarded the Plaintiff damages and attorney fees for over \$13,500 with interest. After the Judgment was entered, the client requested a copy of the brief the attorney filed on her behalf. He faxed the client a Brief in Opposition to Term Lease that included a Certificate of Service, indicating it had been mailed to opposing counsel. The brief was not filed with the Court nor did opposing counsel receive a copy. In this matter and in a separate matter, the attorney failed to respond to the informal complaint filed against him with the ODC, despite ODC's requests for response. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney appeared. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.3, 3.4(c), 8.4(c) and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and suspended the attorney from the practice of law in Montana for a period of 90 days and ordered him to pay the costs of the disciplinary proceedings. *In re Marvin E. Alback*, MT PR 09-0222 (2009).

Failure to act. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to timely serve civil complaint. Attorney was retained by his client to pursue wage and constructive wrongful discharge claims. Without consulting his client, the attorney did not pursue the wrongful discharge claim nor did he advise his client that he would not pursue that claim. The complaint filed asserted only wage claims. The client testified that the attorney advised him that the wrongful discharge claim would be filed separately at a later date. No summons was issued at the time the attorney filed the complaint, but rather he caused the summons to be issued at a later date. He failed to serve the summons until after the applicable

statute of limitations had expired. The opposing party filed a motion to dismiss, which was granted. The attorney appealed to the Supreme Court but failed to request a transcript of the hearing. The attorney's appeal was unsuccessful. The attorney failed to keep his client informed about the status of his case nor did he timely or regularly respond to his client's attempts at communication. He failed to advise his client of the district court's decision or his appeal of the decision. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC and ordered he receive a public censure and pay costs of the disciplinary proceedings. *In re Hennessey*, MT PR 06-0794 (2008).

Failure to act. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the attorney acknowledged in a *Conditional Admission and Affidavit of Consent* submitted prior to filing a formal complaint, that his acts or omissions during his representation of a client violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC. The Montana Supreme Court ordered the attorney receive a public censure by the Court and to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 08-0169 (2008).

Failure to act. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed, and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Failure to act/abandoned clients. Attorney was retained by two clients to represent them in their dissolution matters. The first client paid the attorney a \$400 retainer, plus \$190 for filing fees and despite numerous attempts to contact the attorney, never heard from him again. The second client paid the attorney \$1,250, and the attorney filed the Petition for Dissolution and served the respondent. After the respondent returned the Acknowledgment of Service form, the attorney failed to file it with the Court. He abandoned his client, failed to communicate with her despite her numerous attempts to contact him, and failed to protect her interests, including, but not limited to, returning his unearned fees. The attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d) and 8.1(b), MRPC. The Court extended the attorney's existing suspension for two additional years and ordered him to pay the costs of the disciplinary

proceedings. Any reinstatement is conditioned on his refund of \$400 to the first client and \$1,000 to the second client. *In re J. Stuart Bradshaw*, MT PR 06-0419 (2007).

Failure to act, appear at court hearings. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees. The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0519 (2007).

Failure to act. The allegations in the Formal Complaint included the following. Attorney was retained by her clients to represent them regarding a Petition for Grandparent Visitation Plan filed by their children's maternal grandparents. The parties attended a settlement conference, at which a tentative settlement was reached. Opposing counsel sent a draft of the grandparent/grandchild contact plan to the attorney. The attorney's clients advised the attorney they wanted certain changes made to the plan. Until the clients terminated the attorney's services, the attorney failed to communicate with them despite their numerous attempts. The attorney also failed to respond to opposing counsel's inquiries regarding his proposed contact plan. The settlement master filed two status reports, wherein he recommended the Court approve

opposing counsel's draft of the proposed contact plan. Opposing counsel moved the court to adopt the proposed plan and the settlement master's recommendations. In the meantime, the opposing party contacted the attorney's clients and informed them that it did not appear they were receiving information that opposing counsel had been sending to their attorney. The opposing party suggested they draft their own proposed final plan and submit it to opposing counsel. Opposing counsel wrote the attorney, indicating that the parties had reached an agreement as to the language and terms of the plan. Opposing counsel enclosed a proposed final draft and requested the attorney submit it to her clients for their signatures and return it to him. The attorney did not forward the letter or draft to her clients. The parties signed a new proposed plan; however, the court issued its Findings of Fact, Conclusions of Law, Judgment and Order Implementing Grandparent/Grandchild Contact Plan, which did not encompass the agreed upon changes. The clients filed a motion with the court to terminate their attorney, which was granted. The clients also filed a *pro se* Motion to Modify the Court's Order, which the court denied. The attorney had been suffering from significant health problems. She failed to withdraw from representing her clients when her physical condition materially impaired her ability to represent them. According to the Montana Supreme Court's Order, in the attorney's *Conditional Admission and Affidavit of Consent* submitted to the COP, she acknowledged that her acts or omissions during her representation of clients violated Rules 1.1, 1.3, 1.4, 1.16(a)(2) and (c), MRPC. The COP recommended to the Montana Supreme Court that her tendered admission be accepted. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for five years and payment of costs of the disciplinary proceedings. The Court further ordered that during probation, the attorney shall not engage in the private practice of law unless she is under the direct supervision of another attorney. *In re Ferguson*, MT PR 06-0701 (2007).

Failure to file appellate brief. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Failure to act. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of

the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Ereksen*, MT PR 07-0105 (2007).

Failure to act. The attorney was retained by three clients to pursue family law matters. The first client hired the attorney to represent him in a child support proceeding and to complete a parenting plan. The second client hired the attorney to represent her in dissolution of her marriage. The third client hired the attorney to pursue an action for the dissolution of his marriage. In these matters, the attorney failed to keep the client informed of the status of the matters, failed to respond to inquiries, failed to act with reasonable diligence, failed to complete the work for which the attorney was retained, and, upon termination, failed to return any unearned fee. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 1.5, and 1.16(d). The Court ordered the attorney indefinitely suspended for not less than one year and ordered the attorney to pay the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0157 (2006).

Failure to act. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Musick*, MT 05-607 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the

ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

Failure to act. Attorney was hired to represent landowners in a condemnation action. During this representation, the attorney failed to respond to settlement offers, missed litigation deadlines, failed to attend a settlement conference, failed to consult with his clients, and failed to respond to an expert witness' attempts to discuss the case. In response to this and various other allegations, the Montana Supreme Court determined the attorney violated Rule 1.1, MRPC, suspended the attorney for a fixed term of seven months, ordered him to pay the COP and ODC's costs of disciplinary proceedings, and required him to file an affidavit with the Court within 20 days after the effective date of suspension, pursuant to Rule 32, RLDE, showing he had complied with the Court's Order. When the attorney failed to pay the ODC's costs or file the Rule 32 Affidavit, the Court indefinitely suspended him until such time as he complies with the requirements of Rule 32, RLDE, at which point the seven-month suspension that the Court originally ordered will begin. *In re LaPanne*, MT 04-325 (2005).

Failure to act. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. During representation of these clients, the attorney consistently failed to comply with his responsibilities regarding the appeals process. He ignored deadlines and failed to file appellate briefs in three of four cases. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 1.1, MRPC, and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Failure to file appeal. The Court appointed the attorney to represent a client on felony charges. The client was convicted and sentenced to prison. The attorney failed to file an appeal, as the client requested, and took no steps to withdraw as his counsel or otherwise protect his client's interests. The attorney made no attempt to expedite the client's appeal. As a result, the attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violating Rule 1.1, MRPC, as well as other rules. The Montana Supreme Court accepted this admission and publicly censured the attorney. The Court also ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Montgomery*, MT 04-724 (2005).

Abandoning client. Attorney was hired by the client to probate an estate. During representation, the attorney failed to attend meetings with the client, the heirs of the estate, and their attorneys and did not return the client's numerous phone calls. After they finally met, the attorney failed to accomplish any tasks agreed to at meetings with the client. When the client filed a petition for an accounting and attorney's fees, the attorney failed to respond. He also failed to inform the

client of court sanctions entered against her. The attorney was paid \$2300 over the course of representation and no services were rendered. He essentially abandoned his client. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re Bradshaw*, MT 05-095 (2005).

Failure to act. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admits violating Rule 1.1, MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Failure to act. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violating Rule 1.1, MRPC, as well as other rules. The Montana Supreme Court accepted the attorney's admission and publicly censured him. He was also ordered to pay COP and ODC's costs of proceedings. *In re Seel*, MT 05-527 (2005).

Failure to act. Attorney was hired to represent the beneficiary of an estate who believed the executor was acting improperly and should be removed. The attorney accepted a retainer, then failed to file a notice of appearance or petition the court on behalf of his client. The attorney also missed a hearing, failed to return phone calls and failed to consult with the client about the attorney's decision to not make any filings on the client's behalf. The Commission on Practice found violations of several rules of professional conduct, including Rule 1.1, MRPC. The attorney was suspended for not less than a year. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC.

Failure to act. Attorney was hired to represent client in an uncontested dissolution of marriage in December 2001. In September 2002, the Commission on Practice ordered the attorney to provide it with a plan to complete the dissolution the following month. The attorney failed to do so. When ordered to explain himself, the attorney again failed to act. The attorney tendered his admission to misconduct pursuant to Rule 26, MRLDE, which the Commission on Practice reviewed and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure. *In re Harrington*, MT 03-112 (2004).

Failure to act. The attorney submitted a tendered admission to a violation of Rule 1.1, MRPC, for failing to provide competent representation, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Failure to file before statute of limitations tolled. Attorney admitted to allowing the applicable statutes of limitations to toll while representing five different clients. For this and additional misconduct relating to misappropriation of funds, the Montana Supreme Court suspended the attorney indefinitely for a period of not less than four years. *In re Yoder*, MT 02-753 (2003).

Failure to act. In addressing two separate complaints against the attorney, the Commission on Practice and Montana Supreme Court found the attorney accepted money to represent clients, then failed to return telephone calls, missed a scheduled appointment, failed to keep clients informed about their cases and failed to timely prepare documents. The Montana Supreme Court found the attorney's conduct violated Rule 1.1, MRPC, and other rules of conduct and suspended the attorney from the practice of law for a period of not less than one year and directed to refund his fees to the clients. *In re Morris*, MT 01-170 (2001).

Failure to act. Attorney undertook representation of a client in a personal injury action in February 1995. By July 1997, the attorney had done little work on the case beyond preparing a complaint that was not filed. On several occasions, the attorney told the client an action had been filed on her behalf. The client's father checked with the clerk of court in December 1998 and determined no action had been filed. In January 1999, the client confronted the attorney and the attorney claimed he did not file the case because he did not have the necessary filing fee. At a hearing on the matter, the attorney testified he did not file the case because it was not one he could "make immediate money and cash flow on." The Montana Supreme Court found several violations of the MRPC in addition to a violation of Rule 1.1, MRPC. The Court rejected the attorney's constitutional challenges and contentions that *ex parte* communications between special counsel and the Commission violated MCA § 2-4-613. Attorney was suspended for 60 days. *In re Leckie*, MT 00-295 (2001).

Failure to make reasonable efforts to expedite litigation and discipline for filing frivolous issues, pleadings and discovery requests. Attorney was indefinitely suspended from the practice of law in Montana when he failed to competently represent his client's claim. The Montana Supreme Court found attorney violated Rule 1.1, MRPC, and other rules. *In re Tierney*, MT 99-148 (2000).

Failure to act. Attorney undertook representation of a client in a malpractice action against another lawyer. After requesting and receiving a retainer, the attorney failed to provide any legal services whatsoever to advance the malpractice claim, failed to refund the retainer, failed to communicate with the client for approximately two years and failed to provide the client with information that would allow the client to contact him. The Commission on Practice found violations of Rule 1.1, MRPC, as well as other rules of professional conduct. The attorney was suspended indefinitely, for a period of no less than three years. *In re Bowles*, MT 98-719 (2000).

Failure to act, appear. In representing a client accused of DUI, the attorney failed to appear at trial, failed to appear at an omnibus hearing and failed to make efforts to advance the client's interests. The attorney missed the hearing because he was ill and missed the trial because he believed he had been fired. However, the attorney failed to obtain written consent to withdraw, failed to move the court for permission to withdraw and failed to move the court for substitution of counsel. The COP rejected the attorney's motion to admit polygraph tests in evidence at trial under *State v. Staat*. The Commission on Practice determined that his failure to appear or move to continue was a violation of Rule 1.1, MRPC. For this and other violations, the Montana Supreme Court suspended the attorney--already serving a three-year suspension--from the practice of law for an indefinite period of not less than five years. *In re Asselstine*, MT 98-551 (2000).

Effectively abandoned clients/failure to act. Relatively inexperienced attorney agreed to represent clients in a breach of contract action. In the course of her representation, the attorney failed to respond to discovery requests, appeared late and without her clients at a settlement conference, failed to respond to various motions, failed to file witness or exhibit lists, failed to file a pretrial order and failed to appear at trial, resulting in a default against the clients. Attorney spoke to clients about her desire to withdraw, but neglected to follow the procedures for withdrawal. While attorney was suspended for unrelated conduct, she failed to inform her clients, who believed she was still their lawyer. The Montana Supreme Court found violations of several rules, including Rule 1.1, MRPC. Attorney was suspended from practice for one year. *In re Cox*, MT 98-021 (1998).

Inappropriate advice/failure to appear/failure to act. Montana Supreme Court found three violations of Rule 1.1, MRPC, in three unrelated cases. First, in representing a client in a child support and visitation dispute, the attorney advised the client not to return the child to the mother following a visit. The client complied and, eventually, the court assessed costs and attorney fees against the client, to which the attorney failed to oppose in a timely manner. The court issued a writ of execution against the client and seized his bank account. In another matter, attorney represented client accused of DUI. Attorney accepted a retainer, then told the client she couldn't represent him and advised him to plead guilty. A third violation of Rule 1.1, MRPC, was found when the attorney agreed to represent a client in a child custody dispute taking place in Colorado, where she was not licensed to practice. The attorney failed to appear at the hearings in Colorado or associate with local counsel. The attorney--who was indefinitely suspended at the time--was disbarred for these and numerous other violations, which the Montana Supreme Court described as an unparalleled "pattern of unethical conduct, disregard for the interests of her clients and others, and disdain for the fundamental precepts of honesty and trust, all of which render her patently undeserving of the privilege of being a member of the bar." *In re Sapp-LeClaire*, MT 97-608 (1998).

Failure to advise client/failure to act. Attorney was disciplined for conduct in three unrelated bankruptcy matters. He failed to oppose conversions of bankruptcy cases that were not in the best interest of the clients and he failed to adequately advise the clients about the conversions. Attorney was suspended for 60 days for these and other violations of the MRPC. *In re Morris*, MT 95-061 (1996).

Lack of attentiveness/Failure to act on behalf of client. Attorney was hired to represent homeowners in a construction dispute with their contractor. Attorney accepted service of a complaint filed against his clients but failed to notify the clients or file an answer. When a default judgment was entered against his client, the attorney failed to convince the court to set aside the default and mishandled an appeal to the Montana Supreme Court. Homeowners avoided having their home sold at a sheriff's auction by hiring a different attorney. The attorney was hired in a separate matter to represent a client who purchased property encumbered by liens at an auction despite representations to the contrary by the sellers. The attorney was hired in 1988 and told them a federal judge would hear the case in 1990, when no complaint had ever actually been filed on their behalf. The Commission on Practice and Montana Supreme Court found a violation of Rule 1.1, MRPC, by failing to represent clients insofar as preparation,

attentiveness and decisiveness are concerned. The attorney was suspended indefinitely from the practice of law for this and other violations of the Montana Rules of Professional Conduct (MPRC). *In re Johnstone*, MT 92-279 (1993).

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Failure to timely file appeal and appear at hearing on motion demonstrates failure to recognize scope of representation. Attorney filed a civil lawsuit on his client's behalf, which was removed to federal court. Three years later, he filed a motion to withdraw as counsel, which the Court denied because he failed to follow local court rules. The attorney continued representing his client and appeared at a hearing on the defendants' motions for summary judgment, which the Court granted, and judgment was entered against his client. The attorney failed to appeal the order granting summary judgment, as his client directed. The client filed a *pro se* Notice of Appeal and later filed a Motion for Extension of Time to File a Notice of Appeal. The appeals court remanded the matter to district court to allow the judge to rule on the motion for extension of time. The judge set the matter for hearing, but the attorney failed to appear, resulting in the Court's Order to Show Cause, directing him to personally appear and show cause why he should not be held in contempt, sanctioned, or otherwise respond. The attorney appeared at the hearing, at which the Court also addressed his client's motion for extension of time; the attorney had no valid justification for failing to timely file the appeal notice. After ODC filed its Complaint alleging violations of Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC, default was entered for the attorney's failure to file an Answer, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding the attorney's failure to file a Notice of Appeal and his failure to appear at the initial hearing on his client's motion for extension of time violated Rules 1.1, 1.2 and 1.3, MRPC. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be indefinitely suspended from the practice of law for not less than seven months and be ordered to pay costs of the disciplinary proceeding.

The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC. *In re David S. Freedman*, MT PR 18-0034 (2018).

Failing to communicate settlement offer to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted that while representing a client in a quiet title action, he failed to advise his client of the opposing party's settlement offer effectively declining the offer without the client's consent, knowledge or authority in violation of Rule 1.2, MRPC. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC, the Montana Supreme Court ordered the attorney be publicly censured and pay the costs of the disciplinary proceedings. *In re Jack Morris*, MT PR 16-0265 (2017).

Failure to abide by clients' objectives in defending lawsuit. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of the MRPC in relation to two separate matters. He admitted violating Rule 1.2, MRPC, in one matter by failing to abide by his clients' objectives to defend them against plaintiffs' claims, resulting in summary judgment being entered against them. Due to the attorney's failure to respond to written discovery and several motions without his clients' consent, including for summary judgment, the motions were summarily granted. Following entry of summary judgment, the attorney failed to attend a hearing regarding the opposing party's request for fees, and the District Court awarded over \$9,500 in fees and costs to the plaintiffs. Due in part to the attorney's inaction, the plaintiffs' constructive fraud allegation against his clients was uncontested, and the District Court ultimately issued judgment against them of over \$356,000. The attorney referred them to bankruptcy counsel, but the constructive fraud finding complicated the bankruptcy. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order accepting the attorney's Conditional Admission that he violated Rules 1.2 and 1.5(b), MRPC, for this and other conduct in two separate matters. He was ordered to be publicly admonished by the COP, pay \$5,000 in restitution to his clients, and pay costs of the disciplinary proceedings. *In re Torger Oaas*, MT PR 16-0279 (2017).

Failure to follow client's directives. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. According to the uncontested report of the referee adopted by the Court, the attorney made misrepresentations to his client, mishandled his client's cost funds by applying them to his attorney's fees, deliberately failed to finish his client's matter, and failed to properly and adequately communicate and address issues with his client. He specifically failed to correct or address billing issues, consciously chose not to file a corrected amended judgment for his client unless and until he received all fees from the client, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client's permission, failed to address issues related to his failure to

retain services of a court reporter for trial as directed by his client, and failed to submit a corrected amended judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana's Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). The Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Failure to communicate plea offer to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rules 1.2 and 1.4 in relation to one client matter by failing to communicate the State's plea offer to the client regarding his criminal distribution of dangerous drugs charges. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with certain conditions. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Settling cases without client knowledge or consent; failure to communicate settlement to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney settled the clients' cases without their knowledge or consent, failed to communicate the settlement offer to the client, failed to communicate the settlement and receipt of funds to the client, or lied to clients or third parties about receiving the funds. In doing so, the attorney violated Rules 1.2, 1.4, 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent and recommended the attorney be disbarred and certain conditions be imposed – namely, reimbursement to all affected clients and former clients and to the Montana Lawyers' Fund for Client Protection for funds paid to former clients – and payment of costs of the disciplinary proceedings. The Montana Supreme Court disbarred the attorney for violating Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Mishandling settlement funds without client's consent. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to

former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Improper limitation of scope of representation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT PR-11-0617 (2012).

Failure to convey settlement offer. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained on a contingency fee basis to pursue his client's damages related to a personal injury. After filing the Complaint, the attorney did not serve the defendant within the required three-year timeframe. As a result, the case was dismissed. The attorney was retained by the same client to defend him against a construction lien filed on his property. After his motion to dismiss was denied, the attorney failed to file an Answer, and default was entered against his client. After filing a Motion to Set Aside Default, the attorney was given another opportunity to file an Answer. The plaintiff made an offer to settle, which the attorney failed to convey to his client. Default Judgment was entered shortly

thereafter. The attorney filed a Notice of Appeal with the Montana Supreme Court but failed to file an opening brief, and the appeal was dismissed. Attorney's fees were awarded to the plaintiff, and Judgment was entered against the client for the fees with interest accruing. The attorney appealed the Judgment then made a settlement offer to the plaintiff's attorney. The plaintiff rejected and made a counteroffer. The attorney paid the plaintiff the amount of the counteroffer from his own funds and dismissed the appeal. The formal complaint alleges violations of Rules 1.1, 1.2, 1.3, 1.4 and 3.2, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure and to pay costs of the disciplinary proceedings. *In re Karl P. Seel*, MT PR 09-0612 (2010).

Settling case without authority. (Reciprocal discipline) The North Dakota Disciplinary Board filed a Petition for Discipline regarding three separate matters wherein it alleged the following. Attorney represented a client to defend it in a civil action filed in Montana. The attorney failed to respond to the clients' insurer's status requests and failed to notify his clients of mediation. At the mediation, the attorney negotiated an \$80,000 settlement without his clients' or his clients' insurer's authority. The attorney personally funded the settlement, depositing the money into his firm's trust account to be remitted to opposing counsel. The attorney represented another client regarding a civil action filed against him in Montana. The attorney failed to keep his client informed of important events, deadlines and discovery obligations. The attorney appeared at the Court-ordered mediation without a responsible decision-maker, as ordered. As a result, the Court sanctioned the client and ordered him to pay the plaintiff's costs incurred in attending the mediation. The attorney, thereafter, failed to respond to discovery requests. As a sanction, judgment was entered in favor of the plaintiff on liability; final judgment was entered against the attorney's client in the amount of \$143,713. The attorney falsely assured his firm that he had kept his client informed and falsified backdated letters so it appeared he had done so. The firm paid the judgment against the client. The attorney represented a plaintiff who sued a health care professional in North Dakota. The attorney failed to diligently seek and obtain an expert opinion, and the opposing party moved to dismiss the case. The Petition for Discipline alleged violations of Rules 1.2, 1.3, 1.4, 1.15 and 8.4, NDRPC. The attorney submitted a Consent to Discipline wherein he consented to suspension from the practice of law for six months and a day. The North Dakota Supreme Court accepted a Stipulation, Consent to Discipline and Recommendation of Hearing Panel and suspended the attorney from the practice of law in North Dakota for a period of six months and a day and ordered him to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2002), suspending the attorney from the practice of law in Montana for a period of six months and a day and ordering him to pay costs. *In re Shane D. Peterson*, MT PR 09-0416 (2009).

Failure to consult with client and obtain informed consent regarding decision. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including

sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new

counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information; and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to abide by client's decisions. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Matthew L. Erekson*, MT PR 07-0105 (2007).

Abandoning client. Attorney was hired by the client to probate an estate. During representation, the attorney failed to attend meetings with the client, the heirs of the estate, and their attorneys and did not return the client's numerous phone calls. After they finally met, the attorney failed to accomplish any tasks agreed to at meetings with the client. Through these actions, the

attorney violated Rule 1.2, MRPC, because he failed to abide by his client's decisions concerning the objectives of representations and did not consult with her as to the means by which they were to be pursued. He essentially abandoned his client. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re J. Stuart Bradshaw*, MT 05-095 (2005).

Assisting in clients' fraud and deception constituted misrepresentation to opposing parties and the court. Attorney was retained by his client to represent her in a will contest of her mother's will in her estate matter. The attorney also represented the mother's six grandchildren. The mother's will disinherited the client. The client petitioned the district court to be appointed as her mother's conservator, which was granted. As her mother's conservator and guardian, the client filed three inventories with the court and misrepresented that the total value of her mother's estate was worth \$1.2 million, which included several accounts worth \$270,000 that she held in joint tenancy ownership with her mother, and she was named as a beneficiary. None of the inventories distinguished between the probate assets and non-probate assets. At mediation concerning the will contest and the client's alleged misconduct in the conservatorship proceedings, the client had already claimed a fraction of the joint tenancy accounts and was working to obtain the rest of the \$270,000, which was never disclosed at mediation. The other parties assumed they were negotiating based on the \$1.2 million total estate value, which included the joint tenancy accounts. The attorney remained silent as to whether the settlement included the joint tenancy accounts. When questioned by opposing counsel regarding whether the value of the estate included the joint tenancy accounts, the attorney remained silent, pursuant to his client's request. The attorney's client instructed him not to respond even though the client informed the attorney months before of the client's intention to take the joint tenancy accounts outside of any settlement. The attorney later drafted a stipulation purporting to resolve all disputes regarding the division of the estate. The court held a hearing on the personal representative's petition for direction on distributing the joint tenancy accounts. The court determined that the client had no right to the joint tenancy accounts because those accounts were included in the total estate value. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 1.2(d), MRPC, by following his client's instructions not to disclose material information to opposing counsel. The attorney's omission constituted a misrepresentation that assisted in his client's fraudulent purpose of taking the joint tenancy accounts outside of the settlement agreement. The attorney could have avoided the situation by withdrawing from representation under Rule 1.16, MRPC. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 3.3(a)(2), MRPC, by failing to disclose material information to the district court presiding over the contested will action, specifically, his client's intention to take the joint tenancy accounts. The attorney proceeded to misrepresent in the signed stipulation that all disputes had been settled. The attorney did not report to the district court that his client had taken some and planned to take the rest of the joint tenancy accounts outside the \$1.2 million settlement. The client engaged in fraudulent conduct intending to deceive the other parties, and the attorney assisted in their deception. The attorney's conduct violated his duty of candor toward the tribunal. The Montana Supreme Court ordered the attorney appear before it to receive a public censure and to pay all costs of the disciplinary proceedings. *In re Steven T. Potts*, MT 04-562 (2007), 2007 MT 81.

Failure to pursue client's objectives. Attorney represented a client who sought to sue the State of Montana. The attorney had a social relationship with the client, whom he considered a friend. The attorney did not enter into a formal written contingent fee agreement. During the course of the representation, the attorney also failed to communicate in writing with the client, considering it unfriendly. The attorney repeatedly failed to maintain contact with the client and failed to adequately move the case forward. Client concerns about the statute of limitations were also not addressed properly. The Montana Supreme Court found multiple violations of the MRPC, including Rule 1.2, MRPC, and suspended the attorney for three years. *In re Brett C. Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Disregarding client objectives/Failure to consult. In representing clients involved in a dispute with a contractor regarding work done to their home, the attorney failed to pursue the clients' objectives when he failed to file suit on their behalf, failed to answer a complaint filed against them by the contractor and failed to alert his clients that a default had been entered against them and their home was scheduled to be sold at auction. The attorney failed to abide by his clients' decisions concerning the objectives of the litigation and failed to consult with them on matters of material importance to their case. The attorney was hired in a separate matter to represent a client who purchased property encumbered by liens at an auction despite representations to the contrary by the sellers. The attorney was hired in 1988 and told them a federal judge would hear the case in 1990, when no complaint had ever actually been filed on their behalf. The Montana Supreme Court suspended the attorney indefinitely for violating Rule 1.2, MRPC, and other violations of the rules of conduct. *In re James A. Johnstone*, MT 92-279 (1993).

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Failure to diligently pursue client lawsuits. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. In the first matter, the attorney was retained to pursue a breach of contract action related to faulty repairs on his client's truck. He filed a lawsuit, discovery ensued, and he filed an opposed motion to amend the complaint. No ruling or activity took place thereafter for more than a year until the attorney moved to withdraw and filed an attorney's lien. The Court then denied the attorney's motion to amend the complaint and held the motion to withdraw in abeyance pending further explanation from the attorney why he could not continue representing his client. The attorney failed to provide any information or respond to the Court's Order at all. No other activity took place until opposing counsel filed a Motion to Dismiss for Failure to Prosecute, which the Court granted and ordered default for the attorney's failure to respond. Prior to receiving the Court's ruling, the attorney's firm moved *ex parte* and under seal to withdraw from the case and to stay the deadline on the dismissal motion but failed to respond to the motion; the Clerk did not file the pleadings in the case because default had already been entered. The attorney then moved to set aside the order and renewed his motion to withdraw. The Court granted the motion to withdraw but denied the motion to set aside the order of dismissal. The attorney's failure to diligently pursue his client's case violated Rule 1.3, MRPC. In the second matter, the attorney's firm was retained to pursue a wrongful termination and hostile work environment claim. The firm filed the lawsuit and later amended the suit to include additional defendants and claims. The Court later dismissed two defendants and the hostile work environment claim and ordered the firm to file a Second Amended Complaint to correctly caption the parties within 30 days, which they failed to do. After the client contacted them, they undertook settlement discussions and communicated a proposal to the client; he advised them to pursue negotiations and discovery. They failed to do so and failed to respond to the client until he emailed them again three months later. The attorney advised the client the firm could no longer represent him and would move to withdraw from the case, which they did, and the Court granted it. The attorney's failure to diligently pursue his client's case violated Rule 1.3, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP, be placed on probation for three years with conditions, and pay the costs of the disciplinary proceedings for his multiple violations of Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. *In re Matthew Lowy*, MT PR 20-0592 (2021).

Failure to diligently pursue client's counterclaim. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint, acknowledging he could not successfully defend himself against the facts and allegations in Counts One, Three and Four and admitting he violated Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. The attorney was retained to defend his client in a breach of contract lawsuit filed against her by her former realtor regarding a broker's fee dispute and to pursue her counterclaim against the realtor. The attorney failed to act with reasonable diligence and promptness in

pursuing his client's counterclaims in violation of Rule 1.3, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. *In re Bruce M. Jacobs*, MT PR 20-0271 (2020).

Failure to diligently pursue client's civil rights matter. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC, in relation to two separate matters. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights issue. Throughout the following year, the attorney failed to complete any legal services on his client's behalf in violation of Rule 1.3, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than one year and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to diligently pursue clients' matters. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. The attorney admitted she failed to complete the work she was hired to do with reasonable diligence or at all in violation of Rule 1.3, MRPC. In relation to the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The clients advised the attorney it was urgent, and the attorney immediately prepared and filed the necessary documents with the court to initiate the proceedings. The court appointed a physician, visitor attorney, and the clients as temporary co-guardians and co-conservators; the temporary guardianship/conservatorship would expire in six months. One month prior to its expiration, the attorney filed a motion to extend the temporary guardianship, which the Court granted and scheduled a hearing. The attorney failed to notify her clients of the hearing, and they were forced to hire and pay a new attorney to complete the matter. The attorney admitted she violated Rule 1.3, MRPC, by failing to act with reasonable diligence to pursue her clients' petition for guardianship/conservatorship consistent with their interests. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be

indefinitely suspended for not less than seven months and pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to diligently pursue clients' respective family law matters. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed formal complaints regarding two separate disciplinary matters. The attorney admitted the facts as alleged in the Complaints and to multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. In the first matter, the attorney admitted she was retained to amend her client's existing parenting plan, which she did, and the court ordered mediation. After she failed to participate in scheduling mediation, opposing counsel moved to dismiss all claims, to which the attorney failed to respond, and the court granted the motion. Her client was forced to retain new counsel to pursue his parenting plan amendments; however, due to the attorney's misconduct, he was limited in the claims for relief he could advance. The attorney admitted violating Rule 1.3, MRPC, by failing to diligently pursue her client's parenting plan matter. In relation to the second disciplinary matter, the attorney admitted she filed a Petition for Dissolution on her client's behalf, and opposing counsel promptly served discovery requests. The attorney failed to respond to the discovery requests until after opposing counsel filed a Motion to Compel. After settlement, the attorney failed to effectuate the distribution of retirement assets. Her client fired her and was forced to retain new counsel to complete the property division. The attorney admitted her failure to diligently represent her client violated Rule 1.3, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be publicly censured by the Court, be placed on probation for three years with conditions, pay restitution to her two affected clients, and pay the costs of the disciplinary proceedings for her multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. *In re Linda Harris*, MT PR 19-0445 and MT PR 19-0626 (2020).

Failure to represent client diligently and promptly in litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The attorney filed the lawsuit, and the Oregon attorney submitted his *pro hac vice* application. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The attorney solely represented five claimants and jointly represented one claimant with the Oregon attorney; the seventh claimant was represented separately by another Montana attorney. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million, and all plaintiffs agreed to a *pro rata*

distribution. By that time, the plaintiffs' claims varied in amount and risk. The attorney failed to act with reasonable diligence to her and her co-counsel's mutual client, who had the greatest amount of damages, in violation of Rule 1.3, MRPC. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and recommended the Court issue a public censure, impose a 90-day suspension, and order the attorney to pay costs of the disciplinary proceedings for this and other misconduct. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her from the practice of law for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019).

Failure to diligently pursue and settle clients' personal injury claims. Attorney was hired by two clients to pursue their personal injury matter on a contingency fee basis. After months of no progress toward a settlement with the insurance company, the clients fired him. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the attorney failed to file an Answer and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding that based upon the admitted allegations in the Complaint, the attorney violated Rule 1.3, MRPC, by failing to diligently pursue his clients' personal injury matter. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be disbarred and ordered to pay costs for this and other misconduct. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC. *In re David S. Freedman*, MT PR 18-0516 (2019)

Failure to diligently pursue civil rights claims and wrongful termination lawsuit. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted he was retained and paid \$1,500 to represent his client concerning a potential civil rights violation and wrongful discharge claim. He admitted violating Rule 1.3, MRPC, when he failed to diligently investigate and pursue his client's claims by filing the Complaint in federal court one day prior to expiration of the statute of limitations and failing to timely effectuate service of the Complaint. He admittedly failed to appear in federal court and show cause why he failed to timely effectuate service, resulting in dismissal of his client's case with prejudice. He obtained a remand order from the appellate court affirming dismissal but directing it be without prejudice. For this and other misconduct, the attorney admitted violating Rules 1.3, 1.5(a), and 1.5(b), MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission, wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and for violating Rules 1.3, 1.5(a), and 1.5(b), MRPC, ordered the attorney be publicly admonished by COP, pay costs of the disciplinary proceedings, send his client a letter of apology, and be barred from attempting to collect any further fees or expenses from his client. *In re Douglas Marshall*, MT PR 18-0605 (2019).

Failure to competently and diligently fulfill Trustee duties. Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. Two years later, the attorney left his law firm and Georgia and eventually re-located to Montana where he was also licensed to practice law. He failed to provide the Trust beneficiaries any future contact information or any information regarding the location or balance of the Trust. After her grandfather died, the beneficiary, who was of majority age, made several unsuccessful attempts to contact the attorney for three years until she finally located him and requested he pay her college tuition. He informed her he was no longer at his law firm and his life was in upheaval, but he would follow up with her. After he failed to do so, she made multiple unsuccessful attempts to contact him. He finally responded and advised his priority was his family and his wife's ill-health, but he would pay her tuition and for books; he failed to do so. He subsequently advised her he put all Trust assets in stocks and would liquidate them to pay her educational needs; he failed to do so. After he made several unfulfilled promises to pay her tuition and books, she was forced to withdraw from school. When she confronted the attorney about the value of the Trust, he stated he couldn't recall details of how the funds were expended but there was approximately \$200-300,000 remaining. He failed to provide her an accounting or deliver the Trust funds, as requested. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. The attorney's failure to distribute funds as required by the Trust violated Rules 1.1 and 1.3, MRPC. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred for his numerous, egregious, prolonged failures and his extreme dishonesty and breaches of duty. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Failure to diligently pursue an informal probate for client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted she was hired and paid \$400 to informally probate an estate; however, for more than three years, she did not complete any work on the matter. Her client advised the attorney she made other arrangements to complete the probate and requested a refund of her retainer, which the attorney eventually did return. The attorney admitted violating Rule 1.3, MRPC, for failing to diligently work on the probate. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, and 1.4, MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Order re: Rule 26 Conditional Admission wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Mary Zemyan*, MT PR 18-0513 (2019)

Failure to timely file appeal and appear at hearing on motion demonstrates lack of diligence. Attorney filed a civil lawsuit on his client's behalf, which was removed to federal court. Three years later, he filed a motion to withdraw as counsel, which the Court denied because he failed to follow local court rules. The attorney continued representing his client and appeared at a hearing on the defendants' motions for summary judgment, which the Court granted, and judgment was entered against his client. The attorney failed to appeal the order granting summary judgment, as his client directed. The client filed a *pro se* Notice of Appeal and later filed a Motion for Extension of Time to File a Notice of Appeal. The appeals court remanded the matter to district court to allow the judge to rule on the motion for extension of time. The judge set the matter for hearing, but the attorney failed to appear, resulting in the Court's Order to Show Cause, directing him to personally appear and show cause why he should not be held in contempt, sanctioned, or otherwise respond. The attorney appeared at the hearing, at which the Court also addressed his client's motion for extension of time; the attorney had no valid justification for failing to timely file the appeal notice. After ODC filed its Complaint alleging violations of Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC, default was entered for the attorney's failure to file an Answer, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding the attorney's failure to file a Notice of Appeal and his failure to appear at the initial hearing on his client's motion for extension of time violated Rules 1.1, 1.2 and 1.3, MRPC. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be suspended from the practice of law for not less than seven months and be ordered to pay costs of the disciplinary proceeding for this and other misconduct. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary hearing for violating Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC. *In re David S. Freedman*, MT PR 18-0034 (2018).

Failure to diligently pursue client's personal injury claims. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted he represented a client in a personal injury case, pursued claims with an insurance carrier, and filed a lawsuit. He admitted he violated Rule 1.3, MRPC, by failing to have the Complaint served upon the defendants, nearly resulting in the case's dismissal. His client ultimately retained other counsel, who served the Complaint days prior to the statute of limitation expiring. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, and 1.4, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Joshua Morigeau*, MT PR 18-0044 (2018).

Failure to appear at multiple district court hearings on behalf of indigent clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting she violated Rules 1.3 and 3.2, MRPC, when she was tardy or failed to appear at various hearings in district court nine times over a period of four years while representing indigent clients as a public defender in multiple cases. She admitted she received several warnings from the judge and was held in contempt three times, fined and ordered to pay costs. She appealed one contempt order to the Montana Supreme Court, which

affirmed the district court's decision. After a Rule 26 hearing, COP issued its Acceptance of Rule 26 Conditional Admission and Affidavit of Consent, Order of Discipline. For violating Rules 1.3 and 3.2, MRPC, COP ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Roberta M. Cross Guns*, MT PR 18-0212 (2018)

Failure to diligently prosecute client's wrongful discharge case and find substitute counsel resulted in case dismissal. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting he violated Rule 1.3, MRPC, when he failed to diligently represent his client in a wrongful discharge case, resulting in the dismissal of his complaint for lack of prosecution. Despite advising the court he would find his client substitute counsel and withdraw from representation after years of no action, he failed to do so. After the case was dismissed, the statute of limitations had expired, leaving his client with no recourse for his claims. After a Rule 26 hearing, COP issued its Acceptance of Rule 26 Conditional Admission and Affidavit of Consent, Order of Discipline. For violating Rule 1.3, MRPC, COP ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re William Managhan*, MT PR 18-0216 (2018).

Failure to file Answer resulted in multi-million dollar judgment. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting he violated Rule 1.3, MRPC, when he failed to file an Answer to the Second Amended Complaint on behalf of his firm's client in an estate litigation case involving a dispute over ownership interests in real property. As a result, a default was entered against his client, and the attorney's attempts to set aside the default failed. After a hearing on damages, a judgment was entered against the client by which the conveyance of property originally quit claimed was rendered null and void, and plaintiffs were awarded over \$2,000,000 in damages plus interest and attorney fees. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order. For violating Rule 1.3, MRPC, COP ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings. *In re Richard E. Gillespie*, MT PR 18-0059 (2018).

Failure to diligently represent client. Attorney was paid a total of \$5,000 to represent his client in his intent to divorce his wife. He filed a Petition for Dissolution on his client's behalf, but she had not yet been served. The client was later charged with misdemeanor Partner Family Member Assault. In the meantime, the Montana Supreme Court suspended the attorney from practicing law for sixty days in another disciplinary matter and ordered him to comply with the notice requirements per the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE). Almost one year later, the client was charged with Assault with a Weapon or Aggravated Assault in connection with a second altercation with his wife. He was also charged with misdemeanor possession of drug paraphernalia and retained the attorney to represent him, paying him an additional \$3,500. The attorney resolved the misdemeanor case to his client's satisfaction then appeared with his client at his arraignment in his felony case. The day before the omnibus hearing, the Montana Supreme Court indefinitely suspended the attorney for not less than seven months in another disciplinary matter, allowing him almost two months to wrap up his cases. The attorney was again required to notify his clients, the courts, opposing parties, etc. of his

second suspension, as well, but he failed to comply in his client's cases. The dissolution case was dismissed for lack of action – the client's wife was never served – but not until after the attorney's suspension began. The client's wife filed her own dissolution proceedings, and new counsel appeared in that case as well as in the pending criminal case. The attorney acknowledged he owed his client a refund of \$850 in unearned fees. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded, among other rule violations, the attorney failed to represent his client with reasonable diligence and promptness in violation of Rule 1.3, MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and, for this and other misconduct, suspended the attorney from practicing law for not less than seven months, ordered him to pay \$850 in restitution plus interest to his former client, and pay costs of the disciplinary proceedings for violating Rules 1.3, 1.16(d), 3.4(c), and 8.1(b), MRPC. *In re Brian Kohn*, MT PR 17-0234 (2018).

Failure to diligently notify court of error. Out-of-state attorney, licensed in Montana, was hired as co-counsel to appear on a limited basis for bankruptcy clients in adversary proceedings filed in U.S. District Court. Co-counsel, who requested the attorney appear and file a brief in U.S. District Court on his client's behalf, was admitted in U.S. Bankruptcy Court for the District of Montana but not in U.S. District Court for the District of Montana. The attorney filed an opposition brief in U.S. District Court with his and co-counsel's names in the heading, even though co-counsel did not yet have *pro hac vice* status. The AUSA wrote co-counsel, noting he had not taken appropriate steps to be admitted *pro hac vice*, and copied the attorney. The attorney attempted to contact co-counsel the same day but was unable to communicate with him until the following week when co-counsel confirmed he was not admitted in U.S. District Court. After the federal judge discovered the error, he *sua sponte* struck the attorney's brief and issued a Show Cause Order directing the attorney to appear and explain. At the hearing, the attorney admitted he did nothing to correct the record after he learned of the mistake. In his written response, he acknowledged his mistake, indicated it was not done with intent to mislead, and apologized to the Court. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 1.3, MRPC, when he failed to notify the Federal Court or correct the pleadings after he learned of his mistake. For this and other rule violations, COP recommended the attorney be publicly censured by the Court, placed on probation for one (1) year, write a letter of apology to the federal judge, and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation but found it unnecessary to place the attorney on probation and further found a written public censure would suffice for violating Rules 1.3 and 8.4(c), MRPC. *In re Timothy Warzecha*, MT PR 16-0026 (2017).

Failure to diligently represent client. Attorney represented the Montana Public Employees Association (MPEA) for several years. He advised the City of Whitefish that MPEA was going to pursue an appeal through the grievance process on behalf of a collective bargaining unit member; however, he failed to do so. He falsely advised that he would file a lawsuit compelling the City to participate in the grievance process, that he had filed a motion to dismiss MPEA from the grievant's lawsuit, and that he was defending MPEA in court and would prevail. MPEA fired the attorney after determining he had abandoned any defense and had repeatedly deceived

MPEA and the grievant. After ODC filed a Complaint alleging violations of Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer deeming all allegations admitted. After a hearing, COP concluded the attorney violated Rule 1.3, MRPC, by failing to provide diligent representation to MPEA or the collective bargaining unit member. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that for this and other misconduct, the attorney violated Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b) and 8.4(c), MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings. *In re Carter Picotte*, MT PR 16-0446 (2017).

Failure to diligently represent client. Attorney represented the Montana Public Employees Association (MPEA) for several years. In handling a grievance filed against the City of Bozeman, he notified the City of the grievant's choice to arbitrate but failed to request a list of arbitrators from the Montana Board of Personnel Appeal as required by the collective bargaining agreement between the City and the MPEA. The attorney failed to timely handle the matter resulting in delayed prosecution for approximately six years. His lack of diligence resulted the District Court's review and adverse decision and an ultimate appeal to the Montana Supreme Court. The attorney also failed to respond to discovery, failed to answer Admissions and failed to appoint an arbitrator and proceed to arbitration within a reasonable period of time. At the formal hearing, the attorney admitted he failed to represent his client, MPEA, diligently in violation of Rule 1.3, MRPC. After the hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded, for this and other misconduct, the attorney violated Rules 1.1, 1.3, 4.1, and 8.4, MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 4.1, and 8.4, MRPC. *In re Carter Picotte*, MT PR 16-0319 (2017)

Failure to diligently represent client's interests in quiet title action. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted that while representing a client in a quiet title action, he failed to advise him of a scheduled mediation, a pending motion for summary judgment filed by opposing counsel, a subsequent hearing on that motion, and a subsequent adverse ruling on the motion. The attorney also admitted he failed to advise his client of the opposing party's settlement offer, effectively declining the offer, and of an appeal filed. He admitted that in doing so, he failed to diligently represent his client's interests in violation of Rule 1.3, MRPC. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. *In re Jack Morris*, MT PR 16-0265 (2017).

Failure to file divorce proceedings; failure to promptly file informal probate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after

ODC filed a formal complaint, admitting several violations of the MRPC in relation to two separate matters. He admitted violating Rule 1.3, MRPC, by failing to diligently pursue divorce proceedings on behalf of one client then withdrew from representation and failed to initiate probate proceedings on behalf of a second client until after receiving his client's ODC grievance nearly three years after he was hired. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court, be placed on probation for two years, subject to certain terms and conditions, and pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to diligently pursue clients' lawsuits. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating Rule 1.3, MRPC, in one case for failing to supplement discovery responses, failing to timely respond to opposing counsel's communications regarding supplementation, and failing to respond to opposing counsel's motion to compel. The Court further granted opposing counsel's request for sanctions striking the client's claims for loss of earnings, earning capacity, and earning opportunity, and future medical expenses. The attorney admitted violating Rule 1.3, MRPC, in a second case for failing to diligently represent his client in her medical malpractice and product liability lawsuit after he obtained an unfavorable expert opinion report, resulting in dismissal of her lawsuit with prejudice. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Montana Supreme Court ordered the attorney be publicly censured by the Supreme Court and to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC. *In re David S. Freedman*, MT PR 16-0239 (2016).

Failure to notify client of appeal denial and subsequent imposition of sentence. Attorney was retained as substitute counsel in criminal DUI case and filed successful motions to quash bench warrant and continue sentencing. He further negotiated a *nolo contendere* plea for a suspended sentence to be stayed pending appeal of the lower court's denial of the motions to suppress and dismiss filed by his client's previous counsel. The appeal was unsuccessful, and the case remanded to the lower court for imposition of sentence. The attorney failed to advise his client the court denied his appeal and his sentenced would be imposed. As a result, his client failed to comply with the Sentencing Judgment, an arrest warrant was issued, and eighteen months later, his client was arrested. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 1.4, MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from practicing law for not less than seven (7) months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Brian Kohn*, MT PR 15-0626 (2016).

Failure to amend bankruptcy schedules. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney acknowledged if the material facts as alleged in the two-count Complaint were proven by clear and convincing evidence, he could not successfully defend himself. The Complaint alleged the following facts. The attorney was retained to complete a Chapter 13 bankruptcy case for a client, who was already making payments under a previously approved plan. The client's circumstances changed requiring her to convert the Chapter 13 bankruptcy to a Chapter 7. He advised the client they would meet prior to the conversion to discuss her financial circumstances; however, he proceeded without sufficient communication and understanding of her current circumstances. Prior to the conversion, the attorney failed to amend the bankruptcy schedules or statement of intent to account for the client's new or secured debt causing financial detriment. His lack of diligence violated Rule 1.3, MRPC. After a Rule 26 hearing, the COP issued its Findings of Fact, Conclusions of Law and Order acknowledging the attorney tendered his admission in exchange for a public admonition by COP and payment of costs of the disciplinary proceedings. Accepting the tendered admission, COP ordered the attorney receive a public admonition by COP and pay reasonable costs for violating Rules 1.3 and 1.4, MRPC, for this and other misconduct. *In re Mark G. Hilario*, MT PR 15-0655 (2016).

Failure to meet deadlines and to appear at clients' administrative proceedings. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. He admitted that while representing two clients in their cases before the Peace Officers Standards and Training ("POST") Council, he failed to meet required deadlines or appear at scheduled proceedings, failed to seek judicial review of the POST Council or Board of Crime Patrol's respective decisions regarding one client at his client's direction, and failed to serve the request for judicial review as instructed by his client in his second client's matter in violation of Rule 1.3, MRPC. Ultimately, one client's POST certificate was permanently revoked, and the other client's POST certificate was suspended for 15 years. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC, for this and other misconduct. *In re Edward G. Chester*, MT PR 14-0475 (2015).

Failure to act diligently. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. According to the uncontested report of the referee adopted by the Court, the attorney made misrepresentations to his client, mishandled his client's cost funds by applying them to his attorney's fees, deliberately failed to finish his client's matter, and failed to properly and adequately communicate and address issues with his client. He specifically failed to correct or address billing issues, consciously chose not to file a corrected amended judgment for his client unless and until he received all fees from the client, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client's permission, failed to address issues related to his failure to retain services of a court reporter for trial as directed by his client, and failed to submit a corrected amended

judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana's Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). The Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Failure to represent client with reasonable diligence in probate case; failure to represent client diligently in criminal case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.3, MRPC, in one client matter by failing to act with reasonable diligence and promptness in representing the client in a probate claim, where he did not file an application to probate a will or file an appearance on his client's behalf in the probate of a subsequent will filed by a separate claimant. He admitted violating Rule 1.3, MRPC, in another client matter for failing to provide discovery to his client, failing to communicate the State's plea offer to him, and failing to do anything further on his case until he filed a motion to continue and motion to withdraw from representation. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with certain conditions for violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to timely file post-conviction petition. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client then failed to notify him that he did not intend to pursue his post-conviction relief petition in violation of Rule 1.3, MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings. *In re Brian Kohn*, MT PR 14-0468 (2015).

Failure to competently and diligently act as closing/escrow agent; failure to deliver property/papers belonging to others; failure to produce accounting of funds; failure to diligently represent personal representative; failure to keep client informed; failure to protect client's interests; failure to respond to disciplinary inquiries. Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or

the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him. ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, Montana Supreme Court Case Nos. PR 14-0055 and PR 14-0245 (2014).

Misappropriation and mishandling client funds; failure to promptly deliver client funds; failure to promptly and fully respond to disciplinary inquiries or authorities. Attorney filed a lawsuit on his client's behalf regarding a personal injury claim. He settled the case for \$12,173.18 new money, and the insurer sent him check for that amount. He deposited the money into his trust account almost 16 months later and immediately wrote himself a check for fees and costs totaling \$937; however, he did not disburse any funds to his client. Within two months, he had withdrawn all of the settlement funds, using them for his own purposes. The client had made numerous inquiries about the status of the settlement proceeds. After the attorney received his client's grievance, he sent him a check for the entire amount of the new money settlement three years after receiving it from the insurer. In order to cover the check, he deposited \$12,500 into his trust account that same day. The attorney delayed responding to the grievance for six months after having to appear and show cause to the Commission for his failure to respond. After several months of requests, the attorney eventually provided his trust account records to ODC. ODC's requests for admission were deemed admitted after a motion to compel discovery was filed, and the attorney failed to respond or otherwise plead. Following a formal hearing,

COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.3, 1.15, 1.18, 8.1(b), and 8.4, MRPC, and Rule 8A(6), MRLDE. Upon the Commission's recommendation, the Supreme Court indefinitely suspended the attorney from the practice of law for one year and ordered him to pay the costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 13-0321 (2014).

Failure to file lawsuit or pursue litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC. Specifically, he admitted he was retained to assist a client with the dissolution of her joint investment of real property with her former boyfriend. She invested approximately \$14,000 in the property and was seeking her portion of the equity. The attorney sent a demand letter with a draft Complaint and Demand for Jury Trial that would be filed in 10 days if no resolution was reached. Negotiations were unsuccessful, and the attorney advised his client he would file the Complaint. Four months later, he emailed his client advising her the Complaint had been filed and would be served that week. Nearly three years later, he admitted to her that the Complaint had not been filed and subsequently sent her a full refund, plus 10% interest, totaling \$1,612.50. He was unable to locate her physical file. He neglected to provide her with reasonable communications and failed to advise her about the status of the Complaint or his failure to institute litigation. He misrepresented to her that he had filed the Complaint. No discovery or further case preparation had occurred. Following a Rule 26 hearing, COP issued its Order of Discipline, which included its Findings of Fact and Conclusions of Law. For violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC, COP ordered the attorney be publicly admonished by the COP, be placed on probation for two years, subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Scott Hilderman*, MT Supreme Court Case No. PR 13-0713 (2014).

Failure to respond to discovery requests and motion to compel; failure to timely assert and/or file claims. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC. Specifically, he admitted he failed to respond to defense counsel's discovery requests in relation to the lawsuit he filed on his client's behalf to pursue damages caused by a motor vehicle accident. He subsequently failed to respond to defense counsel's motion to compel discovery responses, resulting in his client being ordered to pay \$875 for defendant's attorney fees and costs and deeming the requests for admission admitted. The attorney subsequently served defense counsel with his client's unsigned discovery responses to the remaining discovery requests. He failed to respond to defense counsel's second discovery requests. He did not bring a claim against the estate for the at-fault driver within one year after his death, as required by statute. For over five years, during the representation, the attorney failed to conduct any discovery, failed to bring a derivative claim on behalf of his client's wife, failed to assert a claim for underinsured motorist benefits, failed to keep his client informed about the status and/or existence of the discovery requests, did not always respond to his client's inquiries about the status of his case, and failed to advise his client about the Order to Compel and resulting sanctions. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for two years, subject to specific terms and

conditions, pay \$875 plus interest in restitution to his former client, and pay the costs of the disciplinary proceedings. *In re Jeffrey L. Sutton*, MT Supreme Court Case No. PR 13-0069 (2014).

Failure to diligently pursue lawsuit. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC. Specifically, he admitted he was retained to file a lawsuit on behalf of his clients against their real estate agent but failed to act with reasonable diligence and promptness in fulfilling his representation. He did not serve the real estate agent or otherwise pursue the filed complaint in a timely manner, and he failed to make reasonable efforts to expedite his clients' lawsuit consistent with their interests. He failed to return his clients phone calls and respond to their emails. He failed to provide them with periodic invoices for his completed work, pursuant to the fee agreement. After his clients terminated his representation, he filed an attorney's lien claiming fees were due and owing in excess of \$11,000, which was later quashed. He failed to produce his clients' file to their new attorney and did not timely execute the notice of substitution of counsel, causing further delay of their case. He failed to respond to ODC's inquiries concerning his clients' ethics grievance. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC, the Supreme Court ordered the attorney be suspended for 90 days, be publicly admonished by the COP, pay \$2,500 in restitution to his clients, and pay the costs of the disciplinary proceedings. *In re F. Ron Newbury*, MT Supreme Court Case No. PR 12-0680 (2014).

Failure to promptly file immigration petition. Attorney was retained to prepare and file a marriage-based immigration petition with the U.S. Citizenship and Immigration Services of the Department of Homeland Security. She deposited the \$2,000 retainer plus an additional \$900 into her trust account. For over a year, the attorney continually misrepresented to her clients that she had filed the petition and paid the \$420 required filing fee. She sent the clients an invoice indicating the filing fee had been paid and their retainer balance was less than \$65. She had withdrawn nearly all of the funds from her trust account. One year after being retained, the attorney told her clients the filing fee had not cleared her account so she would just re-file the petition. She again misrepresented to her clients that she had filed the petition. Three months later, she informed them she could no longer represent them and sent the petition and filing fee to the Department of Homeland Security the following day. Throughout the representation, she failed to keep her clients reasonably informed about the status of their case and/or failed to promptly comply with their requests for information. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.3, 1.4, 1.15, 1.18, 8.4(c), MRPC. The COP recommended the attorney be publicly admonished by the COP, and be assessed the costs of the disciplinary proceedings. The Court accepted the COP's decision as final. *In re Deborah S. Smith*, Montana Supreme Court Case No. PR 13-0296 (2014).

Lack of diligence. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the

lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT Supreme Court Case No. PR 13-0732 (2013).

Failure to timely file appellate brief; failure to respond to motion to dismiss appeal. Attorney, who had previously resigned from the practice of law and was subsequently suspended for an indefinite period of not less than seven months, moved to dismiss the formal complaint for lack of jurisdiction. The Supreme Court denied the motion. The attorney failed to file an Answer to the formal complaint ODC filed against him; therefore, all allegations were deemed admitted. The complaint alleges, during his representation of a defendant in a lawsuit, the attorney failed to file an opening appeal brief after filing a notice of appeal of a summary judgment award to the Supreme Court. Summary judgment had been granted against his client for nearly \$108,000. The attorney failed to respond to the opposing party's motion to dismiss for failure to file an appeal brief, and the appeal was dismissed. He failed to keep his client informed and to respond to his inquiries. He failed to deliver a copy of his client's file to his new counsel, and he failed to respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16, and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel Moss*, MT Supreme Court Case No. PR 12-0656 (2013).

Failure to file revised appeal brief and to respond to motion to dismiss. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not

respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT Supreme Court Case No. PR 12-0665 (2013).

Failure to comply with mediation requirements; failure to file opening appeal brief; failure to respond to motion for sanctions; failure to appear at court hearing. Attorney was hired to represent his client in dissolution proceedings. The district court entered its decree, and the attorney filed a notice of appeal but failed to comply with the mandatory mediation requirements, failed to submit his client's position statement to the mediator, and failed to file an appeal brief. The Supreme Court dismissed the appeal. The client's ex-wife filed several motions with the district court, including one for sanctions, for failure to comply with court orders. The attorney filed a response, which the client's ex-wife argued had no factual or legal basis and sought sanctions. The attorney did not respond. The attorney did not notify his client of the court's hearing on the motions, nor did he appear at the hearing. The client was found in contempt and was ordered to pay his ex-wife's additional attorney fees, subject to his right to object. The attorney did not file objections, and the court entered judgment of \$3,870.33 against his client. The client hired other counsel. A formal complaint was filed, the attorney defaulted, and all allegations of the complaint were deemed admitted. The attorney voluntarily surrendered his license to practice. His license was already indefinitely suspended for his conduct in another matter. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 3.1, and 3.2, MRPC. The COP recommended the attorney be disbarred and assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT Supreme Court Case No. PR 12-0448 (2013).

Misrepresentation of role in lawsuit; failure to correct misrepresentation; conflict of interest; obtaining confidential information; failure to return confidential file; failure to promptly

withdraw from representation; failure to communicate objective with client; failure to act diligently. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT Supreme Court Case No. PR 12-0662 (2013).

Filing incomplete or inaccurate bankruptcy documents; failure to respond to summary judgment motion; failure to keep clients informed. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3 and 1.4, MRPC. Specifically, he admitted that, during his representation of clients in three separate bankruptcy matters, he filed inaccurate or incomplete bankruptcy schedules, statements of financial affairs or other bankruptcy documents and neglected to file a Statement of Genuine Issues in opposition to a motion for summary judgment. He also admitted failing to keep his clients reasonably informed about the status of their bankruptcy proceeding or to explain the matter to the extent reasonably necessary to permit them to make informed decisions regarding his representation. By his conduct, he violated Rules 1.1, 1.3 and 1.4, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of two years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re S. Charles Sprinkle*, MT Supreme Court Case No. PR 12-0274 (2013).

Failure to respond to discovery requests; failure to respond to motion to compel; lack of communication; failure to communicate the fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained by the personal representative of an estate to handle the probate of a contested will. The contesting party served the attorney with its first set of discovery requests, to which he failed to respond, despite his client's numerous letters reminding him to do so. A motion to compel was filed, to which the attorney also failed to respond. Thereafter, his client terminated his representation, and the district court issued an order compelling her to respond to the discovery requests. The attorney admitted that, should this matter proceed to a contested

hearing, he could not successfully defend himself against charges that: in violation of Rule 1.1, MRPC, he failed to competently represent his client; in violation of Rule 1.3, MRPC, he failed to act with reasonable diligence and promptness in representing his client; in violation of Rule 3.4(d), MRPC, he failed to make a reasonably diligent effort to comply with a legally proper discovery request(s) by an opposing party; in violation of Rule 1.4, MRPC, he did not promptly reply to his client's reasonable requests for information and/or failed to keep his client reasonably informed about the status of the matter; in violation of Rule 1.5(b), MRPC, he failed to communicate in writing the scope of his representation and the basis or rate of his fees and expenses for which his client would be responsible, before or within a reasonable time after commencing the representation. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re Stephen H. Dalby*, MT Supreme Court Case No. PR 12-0059 (2013).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT Supreme Court Case No. PR-11-0617 (2012).

Failure to act competently and diligently; failure to appear at hearings; failure to communicate; improper fees; improper withdrawal from representation; failure to properly train paralegal; conduct is prejudicial to the administration of justice. (Reciprocal Discipline)

The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and

expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT Supreme Court Case No. PR 12-0486 (2012).

Failure to act competently and diligently; failure to communicate; and failure to expedite litigation. Attorney represented his clients regarding their claim against the Montana Department of Natural Resources and Conservation for its negligent fire suppression activities, causing damage and destroying much of the timber and grazing land on their ranch. The attorney filed the lawsuit, engaged in discovery, and hired an expert. However, two years later, he ceased working on his clients' matter, and his communication with his clients was infrequent. The attorney left the law firm where he was employed and took the clients with him. His lack of action and lack of communication continued. After six years of inaction, opposing counsel wrote the attorney and his prior law firm and suggested the case be dismissed due to the inactivity. The clients subsequently elected to have the attorney's prior law firm represent them. New counsel tried the case and recovered a substantial verdict against the State for the clients. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 3.2, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel L. Moss*, MT Supreme Court Case No. PR 11-0623 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. The attorney admitted to struggles with depression and alcoholism and she should have referred her client to other counsel. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay

the costs of the disciplinary proceedings. *In re Ann German*, MT Supreme Court Case No. PR 12-0196 (2012).

Failure to act; lack of diligence; lack of communication; failure to properly withdraw from representation; failure to respond to discovery requests; and failure to respond to disciplinary inquiries. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re F. Ron Newbury*, MT Supreme Court Case No. PR 10-0617 (2012).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance,

transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than six months, be placed on probation, during which she must comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 10-0428 (2011).

Failure to act; lack of diligence; and failure to respond to disciplinary inquiries. Attorney was retained to assist his client with a violation of a Restraining Order or Order of Protection, involving the client's ex-wife and minor children. He was also later hired to assist his client in obtaining visitation and contact rights concerning his minor children. After the client's ex-wife died, her brother and his wife petitioned to be appointed co-guardians and co-conservators for the children. The attorney contacted opposing counsel prior to the guardianship hearing to advise that there would be no objection to the guardianship, and the petitions were granted. The attorney subsequently filed proposed parenting plans with the district court. Despite notification by the clerk of court that a motion or petition is required to be filed along with the proposed plans, he failed to do so. He did nothing further to assist his client to obtain visitation or contact rights regarding his minor children. The attorney failed to respond to an informal complaint filed against him with the ODC, despite ODC's two requests for a response. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, and failure to respond to disciplinary inquiries. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 8.1(b), MRPC. The COP recommended the attorney be publicly censured by the Court, be placed on probation for two years, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and publicly censured the attorney, placed him on probation for two years, subject to certain terms and conditions, and

ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 09-0224 (2011).

Failure to act; lack of diligence; failure to communicate rate of fees and scope of representation in writing; failure to properly withdraw from representation; failure to expedite litigation; failure to respond to disciplinary inquiries. Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Failure to act; lack of diligence; failure to communicate; failure to properly withdraw from representation. Attorney was disciplined for his conduct relating to two separate matters. In the first matter, the attorney was hired to assist a client in a wrongful death claim arising out of North Dakota. The attorney arranged for a North Dakota law firm to handle the matter and requested his client pay him \$3,700 to be used for litigation costs incurred by the North Dakota firm, which the client paid. The client subsequently hired the attorney to defend him in a lawsuit filed against him for money allegedly owed to the plaintiffs. The attorney appeared on his client's behalf, but there was no evidence that he took any further action in the matter. After the client terminated the attorney's representation in both cases, he, as well as his new attorney, requested his files, original documents, and a refund of the remaining funds deposited into the attorney's trust account. More than four months later, the attorney transferred the remainder of the funds in the amount of \$2,200 to his former client's new attorney, but he never provided an accounting of the money. The attorney failed to pay the North Dakota firm for expenses

invoiced to his client relating to the wrongful death lawsuit. He recalled paying an expert witness fee of \$1,500 from his trust account, which led him to the \$2,200 refund; however, he had no record to evidence the payment. In the second matter, the attorney was hired to defend a client who was charged with felony Driving Under the Influence (DUI). The attorney filed a Motion to Suppress or Dismiss the charge but failed to timely file a brief in support of the motion even after requesting an extension to do so. As a result, the district court denied his Motion. He failed to inform his client of the reasons the Motion was denied. His client ultimately learned of the denial after receiving notice from the court. His client later learned that the Motion was denied because his brief was untimely filed. The attorney filed a questionable Petition for Writ of Supervisory Control with the Montana Supreme Court. He told his client to plead guilty to felony DUI because he could not win the case, but after retaining new counsel, the client pled guilty to a lesser offense. The ODC filed a formal complaint alleging the attorney violated the Rules of Professional Conduct in three separate matters; however, the COP determined that clear and convincing evidence only existed to prove violations in two of the matters. In the first matter, ODC alleged the attorney failed to keep his client reasonably informed about the status of his matters and did not respond to his client's reasonable requests for information in violation of Rule 1.4. After termination of his representation, the attorney failed to timely deliver funds, files, and documents to his client or his client's new attorney in violation of Rule 1.16(d). In the second matter, ODC alleged he failed to provide his client with competent representation regarding the DUI charges filed against his client in violation of Rule 1.1, and he failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.16(d), MRPC. The COP recommended the attorney be publicly censured by the Supreme Court and be assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to appear before the Court for a public censure and to pay the costs of the disciplinary proceedings. *In re Solomon S. Neuhardt*, MT PR 09-0621 (2011).

Failure to act; lack of diligence; failure to communicate; failure to communicate rate of fees and scope of representation in writing. Attorney was retained by his client to handle an ancillary probate matter wherein the title to certain mineral rights needed to be transferred to the heirs of the estate. The attorney advised his client that the ancillary probate could be opened and closed in a matter of days. His client sent him \$1,500 and the necessary documents to commence the probate. The attorney never provided his client with a written fee agreement, or anything in writing, setting forth the scope of his representation and the basis or rate of his fee. He did not deposit the \$1,500 into a trust account. The attorney failed to respond to his client's letters and failed to return her calls. He failed to update her about the status of her matter, failed to comply with her requests for information, and failed to send her any probate documents. He failed to file any pleadings and failed to open an ancillary probate to effect transfer of the mineral rights. The attorney eventually refunded his client the \$1,500 after multiple requests from her and several promises to do so. He did not complete the work that he was hired to do. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence, failure to promptly reply to his client's requests for information and/or keep her informed about the status of the matter, failure to

communicate the scope of representation and the basis or rate of the fee and expenses within a reasonable time after commencing the representation, failure to deposit the retainer into his trust account, and taking fees before they were earned. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.5(b), MRPC. The COP recommended the attorney receive a private admonition to be administered by the COP, be placed on probation for two years, and assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, be placed on probation for two years, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 10-0411 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained to handle a bankruptcy for his clients, who paid him a \$1,800 flat fee. The attorney deposited the money into his operating account and not into his trust account; he took the fee before it was earned. The attorney failed to communicate the fee arrangement and the scope of his representation to his clients in writing. The attorney failed to file a bankruptcy petition for his clients. He accepted the representation despite his large caseload. The formal complaint alleges violations of Rules 1.3, 1.5, 1.15, 1.16(a) and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure, to be placed on probation for two years, and to pay costs of the disciplinary proceedings. *In re Stephen R. McCue*, MT PR 09-0611 (2010).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained on a contingency fee basis to pursue his client's damages related to a personal injury. After filing the Complaint, the attorney did not serve the defendant within the required three-year timeframe. As a result, the case was dismissed. The attorney was retained by the same client to defend him against a construction lien filed on his property. After his

motion to dismiss was denied, the attorney failed to file an Answer, and default was entered against his client. After filing a Motion to Set Aside Default, the attorney was given another opportunity to file an Answer. The plaintiff made an offer to settle, which the attorney failed to convey to his client. Default Judgment was entered shortly thereafter. The attorney filed a Notice of Appeal with the Montana Supreme Court but failed to file an opening brief, and the appeal was dismissed. Attorney's fees were awarded to the plaintiff, and Judgment was entered against the client for the fees with interest accruing. The attorney appealed the Judgment then made a settlement offer to the plaintiff's attorney. The plaintiff rejected and made a counteroffer. The attorney paid the plaintiff the amount of the counteroffer from his own funds and dismissed the appeal. The formal complaint alleges violations of Rules 1.1, 1.2, 1.3, 1.4 and 3.2, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure and to pay costs of the disciplinary proceedings. *In re Karl P. Seel*, MT PR 09-0612 (2010).

Failure to act, failure to prosecute claim, failure to timely file appeal brief, failure to return client file and provide accounting of retainer, and failure to respond to disciplinary inquiries.

Attorney was retained to represent a client regarding a personal injury claim; the client paid him a \$6,000 retainer. Three years later, the District Court issued an Order to Show Cause Why Case Should Not Be Dismissed. After the Clerk of Court sent a copy of the Order to the attorney's office, it was returned as non-deliverable. The attorney failed to notify the Court of his change of address. The Court subsequently dismissed the action for failure to prosecute. The dismissal order was sent to the attorney at the same address and was not returned. The attorney later contacted opposing counsel and at that time learned of the Order of dismissal. He advised that he would be filing a motion to reinstate the action. Two years later, he filed the motion. A hearing was held, and the Court denied the Motion to Reinstate Claim. The attorney filed a Notice of Appeal, which was dismissed because he did not timely file an opening brief. The client requested the original or a copy of the file; the attorney failed to comply and failed to account for the retainer the client paid him. The attorney failed to respond to the informal complaint filed against him with the ODC despite ODC's two requests for a response. In a second matter, the attorney also failed to respond to ODC's two requests for a response. The attorney failed to file an Answer to the formal complaint ODC filed against him. A default hearing was held before the COP, and the attorney appeared at the hearing. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for 30 days and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re R. Allen Beck*, MT PR 09-0227 (2009).

Failure to communicate; settled case without authority; failure to expedite litigation; failure to respond to discovery requests; failure to comply with court order; falsified documents; failure to seek and obtain expert opinion, resulting in case dismissal. (Reciprocal discipline) The North Dakota Disciplinary Board filed a Petition for Discipline regarding three separate matters wherein it alleged the following. Attorney represented a client to defend it in a civil action filed in Montana. The attorney failed to respond to the clients' insurer's status requests and failed to notify his clients of mediation. At the mediation, the attorney negotiated an \$80,000 settlement

without his clients' or his clients' insurer's authority. The attorney personally funded the settlement, depositing the money into his firm's trust account to be remitted to opposing counsel. The attorney represented another client regarding a civil action filed against him in Montana. The attorney failed to keep his client informed of important events, deadlines and discovery obligations. The attorney appeared at the Court-ordered mediation without a responsible decision-maker, as ordered. As a result, the Court sanctioned the client and ordered him to pay the plaintiff's costs incurred in attending the mediation. The attorney, thereafter, failed to respond to discovery requests. As a sanction, judgment was entered in favor of the plaintiff on liability; final judgment was entered against the attorney's client in the amount of \$143,713. The attorney falsely assured his firm that he had kept his client informed and falsified backdated letters so it appeared he had done so. The firm paid the judgment against the client. The attorney represented a plaintiff who sued a health care professional in North Dakota. The attorney failed to diligently seek and obtain an expert opinion, and the opposing party moved to dismiss the case. The Petition for Discipline alleged violations of Rules 1.2, 1.3, 1.4, 1.15 and 8.4, NDRPC. The attorney submitted a Consent to Discipline wherein he consented to suspension from the practice of law for six months and a day. The North Dakota Supreme Court accepted a Stipulation, Consent to Discipline and Recommendation of Hearing Panel and suspended the attorney from the practice of law in North Dakota for a period of six months and a day and ordered him to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2002), suspending the attorney from the practice of law in Montana for a period of six months and a day and ordering him to pay costs. *In re Shane D. Peterson*, MT PR 09-0416 (2009).

Failure to act; failure to consult with client and obtain informed consent regarding decision; failure to communicate; lack of diligence; failure to expedite litigation; failure to comply with requirements regarding terminating representation; failure to comply with discovery requests; dishonesty, deceit, misrepresentations and fraud; conduct prejudicial to administration of justice. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased

representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to file a response brief as ordered by the Court, misrepresentations to client, failure to respond to disciplinary inquiries. Attorney was retained to defend a client in a lawsuit filed against her by her former landlord for damages to a rental property. At trial, the Court directed counsel to file briefs regarding the lease at issue. The attorney failed to file a brief or to respond to the Plaintiff's brief. The Court awarded the Plaintiff damages and attorney fees for over \$13,500 with interest. After the Judgment was entered, the client requested a copy of the brief the attorney filed on her behalf. He faxed the client a Brief in Opposition to Term Lease that included a Certificate of Service, indicating it had been mailed to opposing counsel. The brief was not filed with the Court nor did opposing counsel receive a copy. In this matter and in a separate matter, the attorney failed to respond to the informal complaint filed against him with the ODC, despite ODC's requests for response. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney appeared. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.3, 3.4(c), 8.4(c) and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and suspended the attorney from the practice of law in Montana for a period of 90 days and ordered him to pay the costs of the disciplinary proceedings. *In re Marvin E. Alback*, MT PR 09-0222 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The

client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to timely serve civil complaint, failure to act diligently. Attorney was retained by his client to pursue wage and constructive wrongful discharge claims. Without consulting his client, the attorney did not pursue the wrongful discharge claim nor did he advise his client that he would not pursue that claim. The complaint filed asserted only wage claims. The client testified that the attorney advised him that the wrongful discharge claim would be filed separately at a later date. No summons was issued at the time the attorney filed the complaint, but rather he caused the summons to be issued at a later date. He failed to serve the summons until after the applicable statute of limitations had expired. The opposing party filed a motion to dismiss, which was granted. The attorney appealed to the Supreme Court but failed to request a transcript of the hearing. The attorney's appeal was unsuccessful. The attorney failed to keep his client informed about the status of his case nor did he timely or regularly respond to his client's attempts at communication. He failed to advise his client of the district court's decision or his appeal of the decision. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC and ordered he receive a public censure and pay costs of the disciplinary proceedings. *In re Hennessey*, MT PR 06-0794 (2008).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the attorney acknowledged in a *Conditional Admission and Affidavit of Consent* submitted prior to filing a formal complaint, that his acts or omissions during his representation of a client violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC. The Montana Supreme Court ordered the attorney receive a public censure by the Court

and to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 08-0169 (2008).

Failure to act with diligence. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Failure to act with diligence. Attorney was retained by two clients to represent them in their dissolution matters. The first client paid the attorney a \$400 retainer, plus \$190 for filing fees and despite numerous attempts to contact the attorney, never heard from him again. The second client paid the attorney \$1,250, and the attorney filed the Petition for Dissolution and served the respondent. After the respondent returned the Acknowledgment of Service form, the attorney failed to file it with the Court. He abandoned his client, failed to communicate with her despite her numerous attempts to contact him, and failed to protect her interests, including, but not limited to, returning his unearned fees. The attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d) and 8.1(b), MRPC. The Court extended the attorney's existing suspension for two additional years and ordered him to pay the costs of the disciplinary proceedings. Any reinstatement is conditioned on his refund of \$400 to the first client and \$1,000 to the second client. *In re J. Stuart Bradshaw*, MT PR 06-0419 (2007).

Failure to act with diligence. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees.

The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0519 (2007).

Failure to act with reasonable diligence. The allegations in the Formal Complaint included the following. Attorney was retained by her clients to represent them regarding a Petition for Grandparent Visitation Plan filed by their children's maternal grandparents. The parties attended a settlement conference, at which a tentative settlement was reached. Opposing counsel sent a draft of the grandparent/grandchild contact plan to the attorney. The attorney's clients advised the attorney they wanted certain changes made to the plan. Until the clients terminated the attorney's services, the attorney failed to communicate with them despite their numerous attempts. The attorney also failed to respond to opposing counsel's inquiries regarding his proposed contact plan. The settlement master filed two status reports, wherein he recommended the Court approve opposing counsel's draft of the proposed contact plan. Opposing counsel moved the court to adopt the proposed plan and the settlement master's recommendations. In the meantime, the opposing party contacted the attorney's clients and informed them that it did not appear they were receiving information that opposing counsel had been sending to their attorney. The opposing party suggested they draft their own proposed final plan and submit it to opposing counsel. Opposing counsel wrote the attorney, indicating that the parties had reached an agreement as to the language and terms of the plan. Opposing counsel enclosed a proposed final draft and requested the attorney submit it to her clients for their signatures and return it to him. The attorney did not forward the letter or draft to her clients. The parties signed a new proposed plan; however, the court issued its Findings of Fact, Conclusions of Law, Judgment and Order Implementing Grandparent/Grandchild Contact Plan, which did not encompass the agreed upon changes. The clients filed a motion with the court to terminate their attorney, which was granted. The clients also filed a *pro se* Motion to Modify the Court's Order, which the court denied. The attorney had been suffering from significant health problems. She failed to withdraw from representing her clients when her physical condition materially impaired her ability to represent

them. According to the Montana Supreme Court's Order, in the attorney's *Conditional Admission and Affidavit of Consent* submitted to the COP, she acknowledged that her acts or omissions during her representation of clients violated Rules 1.1, 1.3, 1.4, 1.16(a)(2) and (c), MRPC. The COP recommended to the Montana Supreme Court that her tendered admission be accepted. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for five years and payment of costs of the disciplinary proceedings. The Court further ordered that during probation, the attorney shall not engage in the private practice of law unless she is under the direct supervision of another attorney. *In re Ferguson*, MT PR 06-0701 (2007).

Failure to file appellate brief. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Failure to act diligently. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Erekson*, MT PR 07-0105 (2007).

In a *Verified Conditional Admission, Stipulation Regarding Extension of Current Suspension, Payment of Assessed Costs and Restitution to Affected Clients* the attorney admitted to violation of MRPC Rules 1.3, 1.5, and 1.15. The Montana Supreme Court accepted the admission and ordered that the attorney be disciplined by extension of his current suspension for one additional year. The attorney, therefore, is indefinitely suspended for a minimum of three years. Further, the Court ordered the attorney pay restitution to the affected clients and costs to the ODC and COP. *In re Atcheson*, MT PR06-0781 (2006).

Failure to communicate, act with diligence, and return fees. The attorney was retained by three clients to pursue family law matters. The first client hired the attorney to represent him in a child support proceeding and to complete a parenting plan. The second client hired the attorney to represent her in dissolution of her marriage. The third client hired the attorney to pursue an action for the dissolution of his marriage. In these matters, the attorney failed to keep the client informed of the status of the matters, failed to respond to inquiries, failed to act with reasonable diligence, failed to complete the work for which the attorney was retained, and, upon termination, failed to return any unearned fee. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 1.5, and 1.16(d). The Court ordered the attorney indefinitely suspended for not less than one year and ordered the attorney to pay the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0157 (2006).

Failure to communicate, act with diligence, and forward client materials. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Musick*, MT 05-607 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

Failure to act. Attorney was hired by client to handle a probate proceeding while on disability/inactive status from a previous disciplinary matter. In a *Conditional Admission and Affidavit of Consent*, the attorney admitted several violations including Rule 1.3, MRPC. The Montana Supreme Court accepted the admission and revoked the attorney's disability/inactive status in favor of a three-year suspension from the practice of law. Upon petition for reinstatement, the attorney would have the burden of meeting the criteria set forth in Rule 28(G), RLDE, given his acknowledgement of his physical or mental disability or infirmity. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Bradley*, MT 04-196 (2005).

Failure to act/failure to consult. Attorney was hired to represent landowners in a condemnation action. During this representation, the attorney failed to respond to settlement offers, missed litigation deadlines, failed to attend a settlement conference, failed to consult with his clients, and failed to respond to an expert witness' attempts to discuss the case. In response to this and various other allegations, the Montana Supreme Court determined the attorney violated Rule 1.3, MRPC, suspended the attorney for a fixed term of seven months, ordered him to pay the COP and ODC's costs of disciplinary proceedings, and required him to file an affidavit with the Court within 20 days after the effective date of suspension, pursuant to Rule 32, RLDE, showing he had complied with the Court's Order. When the attorney failed to pay the ODC's costs or file the Rule 32 Affidavit, the Court indefinitely suspended him until such time as he complies with the requirements of Rule 32, RLDE, at which point the seven-month suspension that the Court originally ordered will begin. *In re LaPanne*, MT 04-325 (2005).

Failure to act. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. During representation of these clients, the attorney consistently failed to comply with his responsibilities regarding the appeals process. He ignored deadlines and failed to file appellate briefs in three of four cases. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 1.3, MRPC and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Failure to file appeal. The court appointed the attorney to represent a client on felony charges. The client was convicted and sentenced to prison. The attorney failed to file an appeal, as the client requested, and took no steps to withdraw as his counsel or otherwise protect his client's interests. The attorney made no attempt to expedite the client's appeal. As a result, the attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violating Rule 1.3, MRPC, as well as other rules. The Montana Supreme Court accepted this admission and publicly censured the attorney. The Court also ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Montgomery*, MT 04-724 (2005).

Abandoning client. Attorney was hired by the client to probate an estate. During representation, the attorney failed to attend meetings with the client, the heirs of the estate, and their attorneys and did not return the client's numerous phone calls. After they finally met, the attorney failed to accomplish any tasks agreed to at meetings with the client. When the client filed a petition for accounting and attorney's fees, the attorney failed to respond. He also failed to inform the client of court sanctions entered against her. The client was essentially abandoned. The attorney failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3, MRPC. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re Bradshaw*, MT 05-095 (2005).

Failure to act/failure to appear/inexperience and lack of education. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 1.3, MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Failure to act. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting several violations, including Rule 1.3, MRPC. The Montana Supreme Court accepted the attorney's admission and publicly censured him. He was also ordered to pay COP and ODC's costs of proceedings. *In re Seel*, MT 05-527 (2005).

Failure to file pleadings. (Reciprocal discipline) Attorney was disciplined by the Ethics and Discipline Committee of the Utah Supreme Court which provided ODC with copies of the relevant documents. The attorney was hired by the client to represent her in a real estate contract dispute. He failed to file a final order which would have permitted his client to enforce the court order or get an appeal dismissed. The attorney was publicly reprimanded in Utah. Subsequently, the Montana Supreme Court ordered the imposition of identical discipline and publicly censured the attorney for violations of several rules, including Rule 1.3, MRPC. *In re Musick*, MT 05-558 (2005).

Missing deadlines; failure to comply with court orders. The attorney admitted her misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 1.3, MRPC, in the course of her representation of a criminal defendant. The attorney failed to comply with orders of the District Court setting deadlines and failed to prosecute her client's appeal in a reasonably diligent fashion. The attorney's misconduct was severe enough for the district judge to hold her in contempt. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney for six months and publicly censured the attorney. *In re Drew*, MT 04-417 (2004).

Failure to act and communicate. In a tendered admission, the attorney admitted he failed to act with reasonable diligence and failed to communicate adequately with his client in a personal injury action over a two-year period. In a separate matter, the attorney admitted he failed to act diligently in coordinating the client's SSI disability benefits with his disability carrier, and failed

to act diligently in filing a workers' compensation claim. The Commission on Practice concluded that he violated Rule 1.3, MRPC, in both matters. The Commission on Practice reviewed the tendered admission and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure. *In re Hennessey*, MT 04-283 (2004).

Failure to file complaint; failure to develop facts; failure to act. Pursuant to a tendered admission, the attorney admitted violating Rule 1.3, MRPC, and other rules of professional conduct in the course of two unrelated representations. First, in an age discrimination and retaliation case against an employer, the attorney failed to file a complaint with the Montana Human Rights Commission within the statutorily prescribed period. When his complaint was dismissed from the MHRC, the attorney filed a similar complaint in district court, without developing any new facts to support a legal basis for the civil action. The attorney also failed to conduct any written discovery, failed to interview witnesses identified by the client and failed to conduct any depositions. The attorney also failed to identify witnesses within the deadlines established by the court's scheduling order. In a second case, the client and attorney testimony conflicted as to whether the attorney represented a complaint had been filed on behalf of the clients, but the attorney admitted to failing to pursue the case with reasonable diligence and promptness. The Commission on Practice reviewed these admissions and recommended the Montana Supreme Court accept them. The Court did so. The Montana Supreme Court suspended the attorney indefinitely for a period of not less than two years for violating Rule 1.3, MRPC, and other rules of conduct. *In re Atcheson*, MT 04-091 (2004).

Failure to act; failure to consult. Attorney was hired to represent the beneficiary of an estate who believed the executor was acting improperly and should be removed. The attorney accepted a retainer, then failed to file a notice of appearance or petition the court on behalf of his client. The attorney also missed a hearing, failed to return phone calls and failed to consult with the client about the attorney's decision to not make any filings on the client's behalf. The Commission on Practice found violations of several rules of professional conduct, including Rule 1.3, MRPC. The Montana Supreme Court suspended the attorney from the practice of law for a period of not less than a year. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC.

Failure pursue appeal; failure to properly withdraw. Attorney was appointed to represent a felon starting at his sentencing hearing. Upon the attorney's initial meeting with the client, problems arose and the attorney ceased her communications with him. Following the sentencing hearing, the attorney failed to pursue her client's appeal or properly withdraw as the attorney of record. Pursuant to a Rule 26, MRLDE, tendered admission, the attorney admitted violating Rule 1.3, MRPC, as well as other rules of professional conduct. The Commission on Practice reviewed the tendered admission and recommended approval to the Montana Supreme Court. The Court approved the admission and suspended the attorney for 30 days. *In re Ferguson*, MT 03-114 (2004).

Failure to act. Attorney was hired to represent client in an uncontested dissolution of marriage in December 2001. In September 2002, the Commission on Practice ordered the attorney to

provide it with a plan to complete the dissolution the following month. The attorney failed to do so. When ordered to explain himself, the attorney again failed to act. Pursuant to a tendered admission, the attorney admitted violating several rules of professional conduct, including Rule 1.3, MRPC. The Commission on Practice reviewed the tendered admission and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure. *In re Harrington*, MT 03-112 (2004).

Failure to act; failure to consult. The attorney submitted a tendered admission to a violation of Rule 1.3, MRPC, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Failure to file before statute of limitations tolled. In a tendered admission, attorney admitted to allowing the applicable statutes of limitations to toll while representing five different clients. For this and additional misconduct relating to misappropriation of funds, the Montana Supreme Court suspended the attorney indefinitely for a period of not less than four years. *In re Yoder*, MT 02-753 (2003).

Failure to act/undue delay. Attorney undertook representation of a client in a personal injury action in February 1995. By July 1997, the attorney had done little work on the case beyond preparing a complaint that was not filed. On several occasions, the attorney told the client an action had been filed on her behalf. The client's father checked with the clerk of court in December 1998 and determined no action had been filed. In January 1999, the client confronted the attorney and the attorney claimed he did not file the case because he did not have the necessary filing fee. At a hearing on the matter, the attorney testified he did not file the case because it was not one he could "make immediate money and cash flow on." The Court rejected the attorney's constitutional challenges and contentions that *ex parte* communications between special counsel and the Commission violated MCA § 2-4-613. The Montana Supreme Court found several violations of the MRPC, including Rule 1.3. Attorney was suspended for 60 days. *In re Leckie*, MT 00-295 (2001).

Failure to act. In addressing two separate complaints against the attorney, the Commission on Practice and Montana Supreme Court found the attorney accepted money to represent clients, then failed to return telephone calls, missed a scheduled appointment, failed to keep clients informed about their cases and failed to timely prepare documents. The Montana Supreme Court found the attorney's conduct violated Rule 1.3, MRPC, and other rules of conduct and suspended the attorney from the practice of law for a period of not less than one year and directed to refund his fees to the clients. *In re Morris*, MT 01-170 (2001).

Failure to file complaint. Attorney was hired to represent a Florida man in a paternity and child support matter. The client underwent DNA testing at the request of the attorney and the state Child Support Enforcement Division that showed he was not the father of the child for whom he was paying support. The attorney thereafter failed to take action on behalf of his client. No court proceedings were undertaken, though the attorney represented to his client that he had spoken to a district judge about the matter and the court had determined the client was not the father of the child. Eventually, the client learned from the court clerk that no proceedings had

been filed and demanded the return of his retainer. The Commission on Practice determined the attorney's conduct violated Rule 1.3, MRPC, as well as other rules of conduct. The Montana Supreme Court upheld the Commission's findings and suspended the attorney for an indefinite period of not less than seven months. *In re Lape*, MT 99-681 (2001).

Failure to act. Attorney undertook representation of a client in a malpractice action against another lawyer. After requesting and receiving a retainer, the attorney failed to provide any legal services whatsoever to advance the malpractice claim, failed to refund the retainer, failed to communicate with the client for approximately two years and failed to provide the client with information that would allow the client to contact him. The Commission on Practice found violations of Rule 1.3, MRPC, as well as other rules of professional conduct. The attorney was suspended indefinitely, for a period of no less than three years. *In re Bowles*, MT 98-719 (2000).

Failure to appear. In representing a client accused of DUI, the attorney failed to appear at trial, failed to appear at an omnibus hearing and failed to make efforts to advance the client's interests. The attorney missed the hearing because he was ill and missed the trial because he believed he had been fired. However, the attorney failed to obtain written consent to withdraw, failed to move the court for permission to withdraw and failed to move the court for substitution of counsel. The COP rejected the attorney's motion to admit polygraph tests in evidence at trial under *State v. Staat*. The Commission on Practice determined that his failure to appear or move to continue was a violation of Rule 1.3, MRPC. For this and other violations, the Montana Supreme Court suspended the attorney--already serving a three-year suspension--from the practice of law for an indefinite period of not less than five years. *In re Asselstine*, MT 98-551 (2000).

Effectively abandoned clients; failure to act. Relatively inexperienced attorney agreed to represent clients in a breach of contract action. In the course of her representation, the attorney failed to respond to discovery requests, appeared late and without her clients at a settlement conference, failed to respond to various motions, failed to file witness or exhibit lists, failed to file a pretrial order and failed to appear at trial, resulting in a default against the clients. Attorney spoke to clients about her desire to withdraw but neglected to follow the procedures for withdrawal. While attorney was suspended for unrelated conduct, she failed to inform her clients of the suspension; the clients believed she was still their lawyer. The Montana Supreme Court found violations of several rules, including Rule 1.3, MRPC. Attorney was suspended from practice for one year. *In re Cox*, MT 98-021 (1998).

Failure to act; failure to appear. Montana Supreme Court found five violations of Rule 1.3, MRPC, in unrelated cases. First, in representing a homeowners' association against a homeowner allegedly in violation of restrictive covenants, the attorney repeatedly failed to respond to inquiries for information. The attorney failed to take requested action on behalf of her client until after her services were terminated for lack of communication. Next, the Court found 1.3 violated when the attorney agreed to represent a woman in a child-custody dispute in Colorado, despite not being licensed to practice law there. The attorney failed to appear in court on behalf of her client and when the clients demanded to see their file, found it contained nothing except the documents the client provided to the attorney at their initial interview. The Court found a third violation of Rule 1.3, MRPC, when the attorney represented a client in a child

support and visitation dispute. The attorney advised her client not to return the child to the mother following a visit. The client obeyed his attorney and wound up being assessed the attorney fees and travel costs incurred by the child's mother. A writ of execution was issued and the client's bank account seized. The attorney failed to file a timely motion in response to the award of fees and costs, which was found to violate Rule 1.3, MRPC. The Court found a fourth violation when the attorney told a client she had filed a financial affidavit on his behalf with the court, despite not actually having done so. When confronted by the client, the attorney demanded he pay her an additional fee to continue the representation. The attorney also failed to notify her client of a court date, resulting in a default judgment being entered against him. Finally, the Court found a fifth violation of Rule 1.3, MRPC, when the attorney represented a client accused of DUI. The attorney accepted a retainer, then told the client she couldn't represent him and advised him to plead guilty. The attorney--who was indefinitely suspended at the time--was disbarred for these and numerous other violations, which the Montana Supreme Court described as an unparalleled "pattern of unethical conduct, disregard for the interests of her clients and others, and disdain for the fundamental precepts of honesty and trust, all of which render her patently undeserving of the privilege of being a member of the bar." *In re Sapp-LeClaire*, MT 97-608 (1998).

Frivolous counterclaims unsupported by facts. Attorney was hired to represent defendants in a federal lawsuit. In the course of the representation, attorney filed counterclaims against the plaintiffs, alleging RICO violations and fraud. Eventually, those claims were dismissed through motions for summary judgment. The plaintiffs then pursued Rule 11 sanctions, which were granted against the attorney in an amount in excess of \$60,000. The federal judge wrote that the attorney failed to properly investigate her counterclaims before filing them and that "one must indulge in much unfounded inference and innuendo to reach the conclusions of wrongdoing asserted by" the attorney and described one of her claims as "rank speculation." The attorney continued to reassert her unfounded counterclaims in amended pleadings. The Commission on Practice determined that the attorney violated Rule 1.3, MRPC, by failing to timely produce factual support for the counterclaims and not acting with reasonable diligence in representing her clients. The Montana Supreme Court rejected some unrelated Commission findings and modified the recommendation in suspending the attorney from the practice of law for six months for this and other violations. *In re Compton*, MT 96-545 (1997).

Failure to act. Attorney represented a client who sought to sue the State of Montana. The attorney did not enter into a formal written contingent fee agreement. During the course of the representation, the attorney also failed to communicate in writing with the client. The attorney repeatedly failed to maintain contact with the client and failed to adequately move the case forward. Client concerns about the statute of limitations were also not addressed properly. The Commission on Practice concluded the evidence showed a "complete failure to act with reasonable diligence and promptness" on behalf of his client. The Montana Supreme Court agreed, finding multiple violations of the MRPC, including Rule 1.3, MRPC, and suspended the attorney for three years. *In re Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Diligence in bankruptcy proceedings. Attorney failed to diligently work on several unrelated bankruptcy matters. In one, the attorney failed to oppose the trustee's motion to convert a

client's case to a Chapter 7 proceeding. For another client, the attorney failed to file a homestead exemption for a client, in a third case the attorney did not diligently work on a client's pleadings. The Commission on Practice found these omissions violated Rule 1.3, MRPC, among others. The Montana Supreme Court suspended the attorney for 60 days. *In re Morris*, MT 95-061 (1996).

Diligence in administering estates. An attorney who failed to take action on the administration of numerous estates for periods ranging from 12 to 17 years was found to be in violation of Rule 1.3, MRPC. The attorney had open estates dating back to 1975 when he came before the Commission on Practice. The Montana Supreme Court suspended the attorney for not less than one year for this and other violations of the MRPC. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Failure to enforce settlement stipulation. Attorney was hired to pursue a collection matter. A stipulation was reached with the debtor in 1988. The stipulation was violated almost immediately, but the attorney took no action to enforce the terms of the agreement. Despite numerous attempts by the client to elicit action, the attorney did nothing. The attorney stopped responding to the client in October 1989. In August 1990, the client hired substitute counsel. The attorney delayed delivery of the client file and didn't provide the client with a copy of the 1988 settlement until 1992. The Montana Supreme Court disbarred the attorney for violation of Rule 1.3, MRPC, and other rules of conduct, some of which involved expropriation of funds from an estate he was representing. *In re Romine*, MT 92-251 (1993).

Derelection of duty to clients. In representing clients against the contractor who worked on their home, the attorney accepted service of a complaint filed against his clients but failed to notify the clients or file an answer. When a default judgment was entered against his clients, the attorney failed to convince the court to set aside the default and mishandled an appeal to the Montana Supreme Court. Homeowners avoided having their home sold at a sheriff's auction by hiring a different attorney. The attorney was hired in a separate matter to represent a client who purchased property encumbered by liens at an auction despite representations to the contrary by the sellers. The attorney was hired in 1988 and told them a federal judge would hear the case in 1990, when no complaint had ever actually been filed on their behalf. The Commission on Practice and the Montana Supreme Court found Rule 1.3, MRPC, was violated in these cases because the attorney was "derelict in his duty and responsibility to the parties." The attorney was suspended indefinitely from the practice of law for this and other violations of the MRPC. *In re Johnstone*, MT 92-279 (1993).

Discovery Sanctions. Several clients hired attorney to represent them in a "wrongful hiring" claim. The clients made numerous calls to the attorney regarding the status of the case, and the attorney repeatedly promised to prosecute the claims. Two and one-half years later, the attorney filed a complaint in the case. Attorney's clients answered the defendant's discovery requests in June, but the attorney failed to turn them over to the defendants until December of the same year. The attorney failed to inform his clients of their scheduled depositions, and failed to attend the depositions. Attorney failed to respond to defendants' subsequent

sanctions motion and failed to attend the sanctions hearing, which resulted in the court dismissing the case and entering judgment against the plaintiffs. The clients subsequently terminated the relationship, hired another attorney, and the case settled. The Commission on Practice found that the first attorney failed to act diligently and failed to reasonably communicate with his clients and keep them informed as to the status of their proceeding. He was suspended for thirty days and ordered to reimburse his clients for fees paid to the second attorney. *In re Wood*, MT 92-043 (1993).

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Failure to reasonably communicate with client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. In the first matter, the attorney was retained to pursue a breach of contract action related to faulty repairs on his client's truck. He filed a lawsuit, discovery ensued, and he filed an opposed motion to amend the complaint. No ruling or activity took place thereafter for more than a year until the attorney moved to withdraw and filed an attorney's lien. The Court then denied the attorney's motion to amend the complaint and held the motion to withdraw in abeyance pending further explanation from the attorney why he could not continue representing his client. The attorney failed to provide any information or respond to the Court's Order at all. No other activity took place until opposing counsel filed a Motion to Dismiss for Failure to Prosecute, which the Court granted and entered default after attorney failed to respond. The attorney had no communication with his client from the time he filed his original motion to withdraw until the opposing counsel filed its motion to dismiss in violation of Rule 1.4, MRPC. In the second matter, the attorney was retained to pursue a wrongful termination action, which he successfully settled and secured employment for his client. One month later, his client left that employment and contacted the attorney to pursue a wrongful termination and hostile work environment claim. The attorney declined but his associate attorney requested to handle the case, which the attorney approved and was obliged to supervise. The firm filed the lawsuit and later amended the suit to include additional defendants and claims. The Court later dismissed two defendants and the hostile work environment claim and ordered the firm to file a Second Amended Complaint to correctly caption the parties in 30 days. Thereafter, the associate left the firm, but the attorney failed to timely communicate the departure to the client. The attorney hired a contract associate attorney to handle the case, and neither of them followed up with the client or filed the Second Amended Complaint or any other pleading. After the client contacted them, they undertook settlement discussions and communicated a proposal to the client. He advised them to pursue negotiations and discovery, but neither the attorney nor the contract associate responded until he emailed them again three

months later. The attorney advised the client the firm could no longer represent him and would move to withdraw from the case. The client requested a copy of his file, but the attorney failed to provide it or respond at all. Three months later, the client terminated his representation. The attorney moved to withdraw and mailed the file to the client after the Court granted the motion. The attorney's failure to communicate with his client and keep him reasonably informed violated Rule 1.4, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the *Conditional Admission* and ordered the attorney be publicly admonished by COP, be placed on probation for three years with conditions, and pay the costs of the disciplinary proceedings for his multiple violations of Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. *In re Matthew Lowy*, MT PR 20-0592 (2021).

Failure to reasonably communicate with client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint, acknowledging he could not successfully defend himself against the facts and allegations in Counts One, Three and Four and admitting he violated Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. The attorney was retained to defend his client in a breach of contract lawsuit filed against her by her former realtor regarding a broker's fee dispute and to pursue a counterclaim against the realtor. The attorney failed to keep his client reasonably informed and failed to promptly comply with her requests for information regarding her counterclaim in violation of Rule 1.4(a), MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. *In re Bruce M. Jacobs*, MT PR 20-0271 (2020).

Failure to reasonably communicate with clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the first matter, the attorney was hired by his clients, who were in a motor vehicle accident, to assist with settling their claims with the at-fault driver's insurance company. He agreed to represent them both on a contingency fee basis, but the contingency fee rate was not made clear. The attorney filed a lawsuit against the insurance company and collected money from one client to cover the service fee; however, he failed to effectuate service. He settled one client's claim for \$3,425 "new money," wrote himself a check for \$1,425 and paid the remaining \$2,000 to his client by cashier's check. He subsequently settled the other client's claim for \$5,000 "new money" and paid his client \$2,765 one month later. One month prior to settlement of the second client's claim, the attorney received a letter and \$124.95 from the insurance company as medical expense reimbursement for his client. He did not inform his client of the payment or disburse the funds to his client. He failed to explain or disclose the way in which the settlement funds would be disbursed to either client, failed to obtain signatures on their settlement distribution sheets and failed to obtain their consent to the distributions in violation of Rule 1.4, MRPC. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights issue, then failed to reasonably communicate with him unless his client initiated contact in violation of Rule 1.4, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it

recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than one year, and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to reasonably communicate with clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. She failed to respond to her clients' numerous attempts to contact her until after they requested a refund of the unearned retainer and return of their original documents. She agreed to meet with her clients to deliver the final draft of their estate planning documents but failed to respond to their email confirmation, failed to meet with them, and failed to provide the documents. The attorney's failure to reasonably communicate with her clients or respond to their inquiries violated Rule 1.4, MRPC. In relation to the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The attorney immediately prepared and filed the necessary documents with the court to initiate the guardianship and conservatorship proceedings. Throughout the proceedings, the attorney failed to respond to her clients' numerous attempts to contact her and failed to notify her clients of a scheduled hearing. Her failure to keep her clients reasonably informed or to respond to their inquiries about the status of their matter violated Rule 1.4, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than seven months and pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to respond to former client's request for retainer refund and accounting of retainer funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting the facts alleged in the Complaint and that she violated Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. The attorney admitted she violated Rule 1.4, MRPC, by failing to respond to her former client's multiple attempts to contact her requesting a retainer refund and an accounting of the funds after she had promised to refund \$800 of the retainer. After a Rule 26 hearing, COP issued its Order on Rule 26 Proceeding, wherein it accepted the attorney's *Conditional Admission* and approved the agreed upon discipline. For this and other misconduct, COP ordered the attorney be publicly admonished by

COP, pay \$800 in restitution to her former client, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. *In re Suzanne Marshall*, MT PR 20-0038 (2020).

Failure to promptly inform clients of costs incurred. Attorney was hired to file a legal malpractice claim against her clients' former attorney for failing to timely pursue their medical malpractice claim after their infant son died, which the district court dismissed as time-barred. The defendant attorney admitted in the legal malpractice lawsuit that he owed his former clients a duty of care and had breached the standard of care by missing the statute of limitations, claiming, however, that his breach did not cause them any injuries or damages. The district court agreed and granted him summary judgment, which the attorney successfully appealed. The attorney retained co-counsel to assist with the trial and entered into a fee-splitting arrangement with him; the clients did not provide written consent and did not have a written agreement with their attorney's newly acquired co-counsel. After the jury returned a defense verdict, the attorney successfully appealed it but had outsourced the brief writing to her co-counsel unbeknownst to the clients. The clients requested another attorney attend mediation on their behalf due to their growing frustration and dissatisfaction with their current attorney, and they settled their claims. Former co-counsel who briefed the appeal had asserted a lien against the settlement proceeds for his fees and costs. At mediation, the attorney asserted she had incurred approximately \$36,000 in costs but later claimed an additional \$45,000 in costs in communications with defense counsel and counsel who also attended mediation with her clients. Before and after mediation, the clients had requested an accounting of the attorney's costs incurred and proposed distribution in connection with their case. After receiving the settlement check, the attorney delivered a disbursement statement to her clients, at which time they first learned she had claimed the additional \$45,000 in costs. She included entries for a legal research consultant and an outside attorney who drafted briefs, which were not costs identified in the contingency fee agreement to be reimbursed by the client. Further, she did not notify her clients or obtain their consent to the charges or to her out-sourcing legal work for which they hired her to do. The fees and costs issue was litigated in district court with the Court awarding the attorney's contracted co-counsel his costs and share of the contingency fee, and allowing the attorney her \$36,000 in costs disclosed prior to mediation but disallowing the additional \$45,000 in costs disclosed thereafter. Costs were ordered to be paid from the gross recovery with the remainder divided equally between the clients and the attorneys, which the attorney unsuccessfully appealed. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation wherein it concluded the attorney violated Rules 1.4(a) and 1.4(b), MRPC, by not promptly informing her clients prior to or during mediation of the total outstanding costs for which they would be responsible and the nature of those costs, despite their requests. For this and other misconduct and rule violations, COP recommended the attorney, who was on indefinite suspension, be disbarred and pay costs of the disciplinary proceeding. After the attorney filed objections and ODC responded, the Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney for violating Rules 1.4, 1.5(a), 3.3(a), 3.4(b), and 8.4(c), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 19-0017 (2020).

Failure to reasonably communicate with clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed formal complaints

regarding two separate disciplinary matters. The attorney admitted the facts as alleged in the Complaints and to multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. In the first matter, the attorney admitted she was retained to amend her client's existing parenting plan. Both her client and opposing counsel attempted to contact her to schedule mediation; she failed to respond to both, and mediation did not take place. Two months later, opposing counsel successfully moved to dismiss all claims due to the attorney's failure to respond to the motion. The attorney failed to inform her client of the dismissal; he learned from another source. For her failure to keep her client reasonably informed about the status of his parenting plan matter, the attorney admitted violating Rule 1.4, MRPC. In relation to the second disciplinary matter, she filed a Petition for Dissolution on her client's behalf, and opposing counsel promptly served discovery requests. The attorney failed to inform her client of the delay in responding to discovery. Her client unsuccessfully attempted to contact her multiple times throughout the representation. The attorney admitted her failure to her client's request for information and failure to keep her client informed about the status of her matter violated Rule 1.4, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court wherein it recommended the Court accept the Conditional Admission and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be publicly censured by the Court, be placed on probation for three years with conditions, pay restitution to her two affected clients, and pay the costs of the disciplinary proceedings for her multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. *In re Linda Harris*, MT PR 19-0445 and MT PR 19-0626 (2020).

Failure to adequately communicate with client regarding global settlement risks. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The attorney filed the lawsuit, and the Oregon attorney submitted his *pro hac vice* application. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The attorney solely represented five claimants and jointly represented one claimant with the Oregon attorney; the seventh claimant was represented separately by another Montana attorney. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million. By that time, the plaintiffs' claims varied in amount and risk, and their interests became adverse; no client signed written waivers of consent to the attorney's conflict of interest. All plaintiffs agreed to the global settlement offer to be distributed on a *pro rata* basis. The attorney failed to timely and adequately communicate to her and her co-counsel's mutual client the multiple representations as they related to her individual claims and procedural posture in the litigation and her decision to accept the global settlement agreement in violation of Rule 1.4, MRPC. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and recommended the Court issue a public censure, impose a 90-day suspension, and order the attorney to pay costs of the

disciplinary proceedings for this and other misconduct. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her from practicing law for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019).

Failure to inform client of co-counsel's potential conflict of interest and waiver requirement.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting he violated Rule 1.4(a), MRPC. The attorney entered into a contingency fee agreement with his client to pursue claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The attorney entered into an agreement with local counsel to assist him in pursuing his client's claims. Local counsel filed the lawsuit, and the attorney submitted his *pro hac vice* application. While preparing for mediation, the attorney and local counsel discussed with their client that local counsel had been approached by additional claimants against the accounting firm and verbally advised her of the potential problems and benefits of joint representation. The attorney advised her she did not have to agree to joint representation or agree to a settlement of her claim; however, he did not advise her of the potential for a conflict of interest. The discussion was not reduced to writing, and the client did not provide written informed consent to local counsel's joint representation of numerous claimants. Local counsel subsequently agreed to represent the five additional claimants against the accounting firm arising out of the same alleged investment misconduct and filed lawsuits on their behalf. A \$4.65 million global settlement was reached to be divided among seven claimants on a *pro rata* basis, which significantly impaired the client's recovery of her total damages. The attorney admitted violating Rule 1.4, MRPC, by failing to promptly inform his client that local counsel may have a conflict of interest in representing six claimants as there was a significant risk her simultaneous representation would materially limit her responsibilities to their joint client. He further admitted violating Rule 1.4, MRPC, by failing to promptly inform his client that local counsel should secure a written informed consent regarding any conflict of interest or the details of an aggregate settlement. After a Rule 26 hearing, COP issued its Acceptance of Rule 26 Conditional Admission and Affidavit of Consent, Order for Discipline wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered he be publicly admonished by COP in writing for violating Rule 1.4, MRPC. *In re Richard M. Layne*, MT PR 16-0715 (2019).

Failure to respond to clients' requests for payment. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. In some cases, he executed promissory notes from him individually or as president of his construction company to current or former clients; in other cases, he executed security or mortgage instruments, which he did not file for recording. The notes called for monthly interest payments or were due in full 30 days after demand and were alleged to be secured by real property. He defaulted on all loans and failed to respond to his clients' and former clients' attempts to collect the debt and ignored their requests entirely in violation of Rule 1.4, MRPC. After ODC filed its Complaint alleging violations of Rules 1.4,

1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred and be ordered to pay full restitution totaling \$1,069,970.83 plus interest to those harmed and to pay costs of the disciplinary proceedings. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay restitution and costs of the disciplinary proceeding for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Failure to communicate status of case with clients or respond to requests for file. Attorney was hired by two clients to pursue their personal injury matter on a contingency fee basis. After months of no contact from the attorney despite numerous attempts, the clients fired him and requested he send them all documents related to their case, to which he failed to respond at all. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the attorney failed to file an Answer and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding that based upon the admitted allegations in the Complaint, the attorney violated Rule 1.4, MRPC, by failing to communicate with his clients regarding the status of their case and failing to respond to his clients' request for their file. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be disbarred and ordered to pay costs. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC. *In re David S. Freedman*, MT PR 18-0516 (2019).

Failure to promptly communicate with Trust beneficiary. Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. Two years later, the attorney left his law firm and Georgia and eventually re-located to Montana where he was also licensed to practice law. He failed to provide the Trust beneficiaries any future contact information or any information regarding the location or balance of the Trust. After her grandfather died, the beneficiary, who was of majority age, made several unsuccessful attempts to contact the attorney for three years until she finally located him and requested he pay her college tuition. He informed her he was no longer at his law firm and his life was in upheaval, but he would follow up with her. After he failed to do so, she made multiple unsuccessful attempts to contact him. He finally responded and advised his priority was his family and his wife's ill-health, but he would pay her tuition and for books; he failed to do so. He subsequently advised her he put all Trust assets in stocks and would liquidate them to pay her educational needs; he failed to do so. After he made several unfulfilled promises to pay her tuition and books, she was forced to withdraw from school. When she confronted the attorney about the value of the Trust, he stated he couldn't recall details of how the funds were expended but there was approximately \$200-300,000 remaining. He failed to provide her an accounting or

deliver the Trust funds, as requested. After ODC filed its Complaint, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. The attorney's failure to keep the beneficiaries informed about his relocation and his failure to promptly respond to requests for information about the status of the Trust and Trust funds violated Rule 1.4, MRPC. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred for his numerous, egregious, prolonged failures and his extreme dishonesty and breaches of duty. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Failure to communicate with client regarding probate status. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted she was hired and paid \$400 to informally probate an estate; however, for more than three years, she did not complete any work on the matter. Her client advised the attorney she made other arrangements to complete the probate and requested a refund of her retainer, which the attorney eventually did return. The attorney admitted violating Rule 1.4, MRPC, for failing to keep her client apprised of the lack of progress on the probate until her client contacted her. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, and 1.4, MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Order re: Rule 26 Conditional Admission wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Mary Zemyan*, MT PR 18-0513 (2019).

Failure to communicate and respond to client's requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.4 and 8.1(b), MRPC. The attorney was retained and paid \$4,500 to assist his client in responding to the amended parenting plan filed by her child's father. The attorney admitted he failed to maintain regular, prompt, and reasonable communication with his client regarding the status, objectives, and decisions of her case, including a pending motion for contempt of court requiring her response, in violation of Rule 1.4, MRPC. He further admitted he failed to provide her with regular billing records of time and costs regarding her case, as she requested, in violation of Rule 1.4, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For this and other admitted misconduct in violation of Rules 1.4 and 8.1(b), MRPC, the Montana Supreme Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings. *In re Michael A. Horton*, MT PR 17-0459 (2018).

Failure to adequately communicate with client regarding litigation status. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted he

represented a client in a personal injury case, pursued claims with an insurance carrier, and filed a lawsuit. The attorney admitted violating Rule 1.4, MRPC, by failing to regularly communicate with his client to keep him informed about the status of his case. He further admitted he changed offices and his phone number without adequately advising his client. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, and 1.4, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Joshua Morigeau*, MT PR 18-0044 (2018).

Failure to keep client informed about status of seized funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted he was retained to represent a client in a criminal felony drug case and a related civil forfeiture matter concerning \$10,318 in cash seized at the time of his arrest. The attorney successfully argued both cases be dismissed and retrieved his client's seized funds. Although the attorney did notify his client he would retrieve his funds on his behalf, he admitted he deposited the funds into his IOLTA trust account and neglected to promptly notify his client he retrieved the funds in violation of Rule 1.4, MRPC. For this and other misconduct, the attorney admitted violating Rules 1.4, 1.15(a), 1.15(b), and 1.18, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For violating Rules 1.4, 1.15(a), 1.15(b), and 1.18, MRPC, the Montana Supreme Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings. *In re Josh Van de Wetering*, MT PR 17-0253 (2018).

Failure to communicate regarding case status, office relocation, requests for information. (Reciprocal Discipline) Attorney entered into a *Stipulation for Discipline* and was suspended for 120 days, with all but 30 days stayed until he successfully completed a 2-year term of probation, by the Oregon Supreme Court. The attorney stipulated and admitted violating Oregon's Rules of Professional Conduct in two separate matters. In the first matter, his client paid him \$750 per the written flat-fee agreement to represent him in his criminal probation violation case. The attorney admitted he violated Oregon's RPC 1.4(a) by failing to respond to his client's requests for a copy of the flat-fee agreement and his multiple attempts to contact him to discuss his case. In the second matter, he admitted violating Rule 1.4 by failing to adequately communicate with and respond to his client and failing to notify him he relocated his office then subsequently ceased active practice. After hearing before the Oregon Disciplinary Board, the *Stipulation for Discipline* was approved by the Oregon Supreme Court for this and other misconduct, and the attorney was suspended for 120 days, with all but 30 days stayed until he successfully completed a 2-year term of probation for violating the Oregon RPC 1.4(a), 1.15-1(d), and 8.1(a)(2). He was further ordered to be subject to the formal reinstatement requirements under Oregon's BR 8.1. Pursuant to Rule 27, MRLDE, the Montana ODC filed a Petition for Reciprocal Discipline with the Montana Supreme Court, attaching a certified copy of the Oregon Supreme Court's Order of Discipline with attached *Stipulation for Discipline*. Oregon's RPC 1.4(a), 1.15-1(d), and 8.1(a)(2), are similar or equivalent to Montana's Rules 1.4(a), 1.15(b), and 8.1(b), MRPC. The Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 120 days, with all but

30 days stayed until he successfully completed a 2-year term of probation for violating Rules 1.4(a), 1.15(b), and 8.1(b), MRPC. *In re Edward LeClaire*, MT PR 17-0034 (2017).

Lack of communication regarding litigation status and failure to communicate settlement offer. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted that while representing a client in a quiet title action, he failed to advise him of a scheduled mediation, a pending motion for summary judgment filed by opposing counsel, a subsequent hearing on that motion, a subsequent adverse ruling on the motion, the opposing party's settlement offer, and an appeal filed. He admitted his failure to keep his client informed of the litigation status and failure to communicate decisions and circumstances requiring his informed consent violated Rule 1.4, MRPC. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC, the Montana Supreme Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings. *In re Jack Morris*, MT PR 16-0265 (2017).

Failure to communicate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC in relation to two separate matters. He admitted violating Rule 1.4, MRPC, by failing to respond to his client's inquiries about the status of a probate matter, failing to promptly comply with her requests for information, and failing to keep her reasonably informed. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court, be placed on probation for two years, subject to conditions, and be ordered to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to keep clients informed detrimental to cases. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating Rule 1.4 in one case for failing to notify his client of opposing counsel's motion to compel, motion to vacate trial date/scheduling order deadlines, and motion for sanctions. As a result, several of his client's claims for past and future damages were ultimately stricken. In a second case, the attorney admitted violating Rule 1.4 by failing to keep his client informed about the status of her case, failing to promptly comply with her requests for information, and failing to notify her he would no longer represent her resulting in her case's dismissal. The attorney admitted violating Rule 1.4 in a third case by failing to notify his client of the Court's Order compelling him to correct his discovery deficiencies prior to withdrawing from representation. The client was ultimately ordered to pay his ex-wife's attorney fees and costs in part due to his failure to comply with the Order to Compel. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission

to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court and to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC. *In re David S. Freedman*, MT PR 16-0239 (2016).

Failure to notify client of appeal denial and subsequent imposition of sentence. Attorney was retained as substitute counsel in criminal DUI case and filed successful motions to quash bench warrant and continue sentencing. He further negotiated a *nolo contendere* plea for a suspended sentence to be stayed pending appeal of the lower court's denial of the motions to suppress and dismiss filed by his client's previous counsel. The appeal was unsuccessful, and the case remanded to the lower court for imposition of sentence. The attorney failed to advise his client the appeal was denied and his sentence would be imposed, resulting in his client's failure to comply with the sentence requirements. An arrest warrant was issued, and eighteen months later, his client was arrested. After a formal hearing in the disciplinary matter, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 1.4, MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from practicing law for a period of seven (7) months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, and 1.4, MRPC. *In re Brian Kohn*, MT PR 15-0626 (2016).

Failure to reasonably consult with client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney acknowledged if the material facts as alleged in the two-count Complaint were proven by clear and convincing evidence, he could not successfully defend himself. The Complaint alleged the following facts. The attorney was retained to complete a Chapter 13 bankruptcy case for a client who was already making payments under a previously approved plan. The client's circumstances changed requiring her to convert the Chapter 13 bankruptcy to a Chapter 7. The attorney advised the client they would meet prior to the conversion to discuss her financial circumstances; however, he proceeded without sufficient communication and understanding of her current circumstances. His failure to reasonably consult with her violated Rule 1.4, MRPC. After a Rule 26 hearing, the COP issued its Findings of Fact, Conclusions of Law and Order acknowledging the attorney tendered his admission in exchange for a public admonition by COP and payment of costs of the disciplinary proceedings for his violations of Rules 1.3 and 1.4, MRPC, for this and other misconduct. Accepting the tendered admission, the COP ordered the attorney receive a public admonition by COP and pay reasonable costs. *In re Mark G. Hilario*, MT PR 15-0655 (2016).

Failure to communicate with client regarding probate case; failure to communicate plea offer to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.4 in relation to his representation of a client in a probate case for failing to keep her reasonably informed or responding to her requests for information. He admitted violating Rules 1.2 and 1.4 in relation to a second client matter by failing to communicate the State's plea offer to the client regarding his criminal distribution of dangerous drugs charges and by failing to keep his client informed or respond to his reasonable

inquiries regarding his case. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with certain conditions. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to communicate with client regarding immigration case. Attorney, practicing immigration law out-of-state, was retained to assist his client in renewing his employment authorization documents. He was paid \$700 to investigate whether the U.S. Government had an existing file concerning his client. He was unable to locate a file and concluded no ability existed to seek relief for his client. The attorney subsequently provided his client with a “letter of protection” and Form G-28 “Notice of Appearance” to show Immigration officials he was represented by counsel in the event he was ever detained. The attorney provided no additional services for his client. The attorney failed to respond to his client’s numerous requests for information and for the file after his representation was terminated in violation of Rule 1.4, MRPC. After a formal disciplinary hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that for this and other misconduct, the attorney violated Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. The Court accepted and adopted COP’s Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney be publicly admonished by the COP, complete an office practice management course, submit a written plan of management practice and policy changes, refund his former client \$1,250 with interest, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. *In re Eduardo L. Encinas*, MT PR 14-0250 (2015).

Settling cases without client knowledge or consent; failure to communicate settlement to client; failure to respond to requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to violating Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple clients’ matters, the attorney settled the clients’ cases without their knowledge or consent, failed to communicate the settlement offer to the client, and failed to communicate the settlement and receipt of funds to the client. In some client matters, he failed to respond to the client’s request for information. In doing so, the attorney violated Rules 1.2, 1.4, 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent and recommended the attorney be disbarred and certain conditions be imposed – namely, reimbursement to all affected clients and former clients and to the Montana Lawyers’ Fund for Client Protection for funds paid to former clients – and payment of costs of the disciplinary proceedings. The Montana Supreme Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c),

and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Failure to keep client informed. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to respond to his client's requests for status updates and failed to notify him that he did not intend to pursue his post-conviction relief petition. The attorney terminated his representation after the filing deadline had passed without consent or notice to his client and failed to advise him of the applicable deadlines. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC, for this and other misconduct. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Failure to keep client informed. Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him.

ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 14-0055 and PR 14-0245 (2014).

Failure to keep client informed; misrepresenting case status to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC. Specifically, he admitted he was retained to assist a client with the dissolution of her joint investment of real property with her former boyfriend. She invested approximately \$14,000 in the property and was seeking her portion of the equity. The attorney sent a demand letter with a draft Complaint and Demand for Jury Trial that would be filed in 10 days if no resolution was reached. Negotiations were unsuccessful, and the attorney advised his client he would file the Complaint. Four months later, he emailed his client advising her the Complaint had been filed and would be served that week. Nearly three years later, he admitted to her that the Complaint had not been filed and subsequently sent her a full refund, plus 10% interest, totaling \$1,612.50. He was unable to locate her physical file. He neglected to provide her with reasonable communications and failed to advise her about the status of the Complaint or his failure to institute litigation. He misrepresented to her that he had filed the Complaint. No discovery or further case preparation had occurred. Following a Rule 26 hearing, COP issued its Order of Discipline, which included its Findings of Fact and Conclusions of Law. For violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC, COP ordered the attorney be publicly admonished by the COP, be placed on probation for two years, subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Scott Hilderman*, MT PR 13-0713 (2014).

Failure to keep client informed or apprised of status of case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC. Specifically, he admitted he failed to respond to defense counsel's discovery requests in relation to the lawsuit he filed on his client's behalf to pursue damages caused by a motor vehicle accident. He subsequently failed to respond to defense counsel's motion to compel discovery responses, resulting in his client being ordered to pay \$875 for defendant's attorney fees and costs and deeming the requests for admission admitted. The attorney subsequently served defense counsel with his client's unsigned discovery responses to the remaining discovery requests. He failed to respond to defense counsel's second discovery requests. He did not bring a claim against the estate for the at-fault driver within one year after his death, as required by statute. For over five years, during the representation, the attorney failed to conduct any discovery, failed to bring a derivative claim on behalf of his client's wife, failed to assert a claim for underinsured motorist benefits, failed to keep his client informed about the status and/or existence of the discovery requests, did not always respond to his client's inquiries about the status of his case, and failed to advise his client about the Order to Compel and resulting sanctions. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC, the Supreme

Court ordered the attorney be publicly censured, be placed on probation for two years, subject to specific terms and conditions, pay \$875 plus interest in restitution to his former client, and pay the costs of the disciplinary proceedings. *In re Jeffrey L. Sutton*, MT PR 13-0069 (2014).

Failure to keep clients reasonably informed. Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The checks were deposited into the attorney's trust account but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Failure to communicate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC. Specifically, he admitted he was retained to file a lawsuit on behalf of his clients against their real estate agent but failed to act with reasonable diligence and promptness in fulfilling his representation. He did not serve the real estate agent or otherwise pursue the filed complaint in a timely manner, and he failed to make reasonable efforts to expedite his clients' lawsuit consistent with their interests. He failed to return his clients phone calls and respond to their emails. He failed to provide them with periodic invoices for his completed work, pursuant to the fee agreement. After his clients terminated his representation, he filed an attorney's lien claiming fees were due and owing in excess of \$11,000, which was later quashed. He failed to produce his clients' file to their new attorney and did not timely execute the notice of substitution of counsel, causing further delay of their case. He failed to respond to ODC's inquiries concerning his clients' ethics grievance. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana

Supreme Court, which the Court accepted. For violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC, the Supreme Court ordered the attorney be suspended for 90 days, be publicly admonished by the COP, pay \$2,500 in restitution to his clients, and pay the costs of the disciplinary proceedings. *In re F. Ron Newbury*, MT PR 12-0680 (2014).

Lack of communication. Attorney was retained to prepare and file a marriage-based immigration petition with the U.S. Citizenship and Immigration Services of the Department of Homeland Security. She deposited the \$2,000 retainer plus an additional \$900 into her trust account. For over a year, the attorney continually misrepresented to her clients that she had filed the petition and paid the \$420 required filing fee. She sent the clients an invoice indicating the filing fee had been paid and their retainer balance was less than \$65. She had withdrawn nearly all of the funds from her trust account. One year after being retained, the attorney told her clients the filing fee had not cleared her account so she would just re-file the petition. She again misrepresented to her clients that she had filed the petition. Three months later, she informed them she could no longer represent them and sent the petition and filing fee to the Department of Homeland Security the following day. Throughout the representation, she failed to keep her clients reasonably informed about the status of their case and/or failed to promptly comply with their requests for information. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.3, 1.4, 1.15, 1.18, 8.4(c), MRPC. The COP recommended the attorney be publicly admonished by the COP, and be assessed the costs of the disciplinary proceedings. The Court accepted the COP's decision as final. *In re Deborah S. Smith*, MT PR 13-0296 (2014).

Failure to communicate. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to keep client informed and to respond to client communications. Attorney, who had previously resigned from the practice of law and was subsequently suspended for an indefinite period of not less than seven months, moved to dismiss the formal complaint for lack of jurisdiction. The Supreme Court denied the motion. The attorney failed to file an Answer to the formal complaint ODC filed against him; therefore, all allegations were deemed admitted. The complaint alleges, during his representation of a defendant in a lawsuit, the attorney failed to file an opening appeal brief after filing a notice of appeal of a summary judgment award to the Supreme Court. Summary judgment had been granted against his client for nearly \$108,000. The attorney failed to respond to the opposing party's motion to dismiss for failure to file an appeal brief, and the appeal was dismissed. He failed to keep his client informed and to respond to his inquiries. He failed to deliver a copy of his client's file to his new counsel, and he failed to respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16, and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel Moss*, MT PR 12-0656 (2013).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions,

and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure keep client informed. Attorney was hired to represent his client in dissolution proceedings. The district court entered its decree, and the attorney filed a notice of appeal but failed to comply with the mandatory mediation requirements, failed to submit his client's position statement to the mediator, and failed to file an appeal brief. The Supreme Court dismissed the appeal. The client's ex-wife filed several motions with the district court, including one for sanctions, for failure to comply with court orders. The attorney filed a response, which the client's ex-wife argued had no factual or legal basis and sought sanctions. The attorney did not respond. The attorney did not notify his client of the court's hearing on the motions, nor did he appear at the hearing. The client was found in contempt and was ordered to pay his ex-wife's additional attorney fees, subject to his right to object. The attorney did not file objections, and the court entered judgment of \$3,870.33 against his client. The client hired other counsel. A formal complaint was filed, the attorney defaulted, and all allegations of the complaint were deemed admitted. The attorney voluntarily surrendered his license to practice. His license was already indefinitely suspended for his conduct in another matter. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 3.1, and 3.2, MRPC. The COP recommended the attorney be disbarred and assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 12-0448 (2013).

Failure to communicate objective with client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

Failure to keep clients informed. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3 and 1.4, MRPC. Specifically, he admitted that, during his representation of clients in three separate bankruptcy matters, he filed inaccurate or

incomplete bankruptcy schedules, statements of financial affairs or other bankruptcy documents and neglected to file a Statement of Genuine Issues in opposition to a motion for summary judgment. He also admitted failing to keep his clients reasonably informed about the status of their bankruptcy proceeding or to explain the matter to the extent reasonably necessary to permit them to make informed decisions regarding his representation. By his conduct, he violated Rules 1.1, 1.3 and 1.4, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of two years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re S. Charles Sprinkle*, MT PR 12-0274 (2013).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained by the personal representative of an estate to handle the probate of a contested will. The contesting party served the attorney with its first set of discovery requests, to which he failed to respond, despite his client's numerous letters reminding him to do so. A motion to compel was filed, to which the attorney also failed to respond. Thereafter, his client terminated his representation, and the district court issued an order compelling her to respond to the discovery requests. The attorney admitted that, should this matter proceed to a contested hearing, he could not successfully defend himself against charges that: in violation of Rule 1.1, MRPC, he failed to competently represent his client; in violation of Rule 1.3, MRPC, he failed to act with reasonable diligence and promptness in representing his client; in violation of Rule 3.4(d), MRPC, he failed to make a reasonably diligent effort to comply with a legally proper discovery request(s) by an opposing party; in violation of Rule 1.4, MRPC, he did not promptly reply to his client's reasonable requests for information and/or failed to keep his client reasonably informed about the status of the matter; in violation of Rule 1.5(b), MRPC, he failed to communicate in writing the scope of his representation and the basis or rate of his fees and expenses for which his client would be responsible, before or within a reasonable time after commencing the representation. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re Stephen H. Dalby*, MT PR 12-0059 (2013).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT PR-11-0617 (2012).

Failure to communicate. (Reciprocal Discipline) The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Lack of communication. Attorney represented his clients regarding a claim against the Town of Superior for damage to their property as a result of a leak in their water service provided by the Town. The attorney filed a lawsuit against the Town, and opposing counsel filed four motions. The attorney did not oppose or respond to the motions nor did he request a hearing, reasoning that the motions were meritorious and there were no facts or law by which he could in good faith oppose them. He failed to advise his clients of the same, and he did not discuss with them other ways in which they could proceed, including stipulating to dismiss the lawsuit or seeking settlement. The attorney did not have a written attorney-client fee agreement signed by the clients. The Court ultimately granted the unopposed motions and dismissed the case with prejudice. The Court also ordered the attorney's clients to pay the Town nearly \$5,000 in costs after the Town filed its Bill of Costs and Affidavit. The attorney did not object to the Town's Bill of Costs nor did he discuss it with his clients, and judgment was entered against them. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, and 1.4, MRPC. The COP recommended the attorney be admonished by the COP, be placed on probation until the lien against his clients is satisfied but within 120 days, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Richard R. Buley*, MT PR 11-0603 (2012).

Failure to communicate. Attorney represented his clients regarding their claim against the Montana Department of Natural Resources and Conservation for its negligent fire suppression

activities, causing damage and destroying much of the timber and grazing land on their ranch. The attorney filed the lawsuit, engaged in discovery, and hired an expert. However, two years later, he ceased working on his clients' matter, and his communication with his clients was infrequent. The attorney left the law firm where he was employed and took the clients with him. His lack of action and lack of communication continued. After six years of inaction, opposing counsel wrote the attorney and his prior law firm and suggested the case be dismissed due to the inactivity. The clients subsequently elected to have the attorney's prior law firm represent them. New counsel tried the case and recovered a substantial verdict against the State for the clients. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 3.2, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel L. Moss*, MT PR 11-0623 (2012).

Lack of communication. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to

appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, and 3.4, MRPC. *In re Ann German*, MT PR 12-0196 (2012).

Lack of communication. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and imposed the recommended discipline for violating Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. *In re F. Ron Newbury*, MT PR 10-0617 (2012).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital

property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than six months, be placed on probation, during which she must comply with certain conditions, and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. *In re Ann German*, MT PR 10-0428 (2011).

Failure to communicate. Attorney was disciplined for his conduct relating to two separate matters. In the first matter, the attorney was hired to assist a client in a wrongful death claim arising out of North Dakota. The attorney arranged for a North Dakota law firm to handle the matter and requested his client pay him \$3,700 to be used for litigation costs incurred by the North Dakota firm, which the client paid. The client subsequently hired the attorney to defend him in a lawsuit filed against him for money allegedly owed to the plaintiffs. The attorney appeared on his client's behalf, but there was no evidence that he took any further action in the matter. After the client terminated the attorney's representation in both cases, he, as well as his new attorney, requested his files, original documents, and a refund of the remaining funds deposited into the attorney's trust account. More than four months later, the attorney transferred the remainder of the funds in the amount of \$2,200 to his former client's new attorney, but he never provided an accounting of the money. The attorney failed to pay the North Dakota firm for expenses invoiced to his client relating to the wrongful death lawsuit. He recalled paying an expert witness fee of \$1,500 from his trust account, which led him to the \$2,200 refund; however, he had no record to evidence the payment. In the second matter, the attorney was hired to defend a client who was charged with felony Driving Under the Influence (DUI). The attorney filed a Motion to Suppress or Dismiss the charge but failed to timely file a brief in support of the motion even after requesting an extension to do so. As a result, the district court denied his Motion. He failed to inform his client of the reasons the Motion was denied. His client ultimately learned of the denial after receiving notice from the court. His client later learned that the Motion was denied because his brief was untimely filed. The attorney filed a questionable Petition for Writ of Supervisory Control with the Montana Supreme Court. He told his client to plead guilty to felony DUI because he could not win the case, but after retaining new counsel, the client pled guilty to a lesser offense. The ODC filed a formal complaint alleging the attorney violated the Rules of Professional Conduct in three separate matters; however, the COP determined that clear and convincing evidence only existed to prove violations in two of the matters. In the first matter, ODC alleged the attorney failed to keep his client reasonably informed about the status of his matters and did not respond to his client's reasonable requests for information in violation of Rule 1.4. After termination of his representation, the attorney failed to timely deliver funds, files, and documents to his client or his client's new attorney in violation of Rule 1.16(d). In the second matter, ODC alleged he failed to provide his client with competent representation regarding the DUI charges filed against his client in violation of Rule 1.1, and he failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3. After a formal hearing, the COP submitted its Findings of Fact,

Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.16(d), MRPC. The COP recommended the attorney be publicly censured by the Supreme Court and be assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to appear before the Court for a public censure and to pay the costs of the disciplinary proceedings. *In re Solomon S. Neuhardt*, MT PR 09-0621 (2011).

Failure to communicate. Attorney was retained by his client to handle an ancillary probate matter wherein the title to certain mineral rights needed to be transferred to the heirs of the estate. The attorney advised his client that the ancillary probate could be opened and closed in a matter of days. His client sent him \$1,500 and the necessary documents to commence the probate. The attorney never provided his client with a written fee agreement, or anything in writing, setting forth the scope of his representation and the basis or rate of his fee. He did not deposit the \$1,500 into a trust account. The attorney failed to respond to his client's letters and failed to return her calls. He failed to update her about the status of her matter, failed to comply with her requests for information, and failed to send her any probate documents. He failed to file any pleadings and failed to open an ancillary probate to effect transfer of the mineral rights. The attorney eventually refunded his client the \$1,500 after multiple requests from her and several promises to do so. He did not complete the work that he was hired to do. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence, failure to promptly reply to his client's requests for information and/or keep her informed about the status of the matter, failure to communicate the scope of representation and the basis or rate of the fee and expenses within a reasonable time after commencing the representation, failure to deposit the retainer into his trust account, and taking fees before they were earned. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.5(b), MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, be placed on probation for two years, and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, and 1.5(b), MRPC. *In re Bradley L. Aklestad*, MT PR 10-0411 (2011).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all

of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Failure to communicate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained on a contingency fee basis to pursue his client's damages related to a personal injury. After filing the Complaint, the attorney did not serve the defendant within the required three-year timeframe. As a result, the case was dismissed. The attorney was retained by the same client to defend him against a construction lien filed on his property. After his motion to dismiss was denied, the attorney failed to file an Answer, and default was entered against his client. After filing a Motion to Set Aside Default, the attorney was given another opportunity to file an Answer. The plaintiff made an offer to settle, which the attorney failed to convey to his client. Default Judgment was entered shortly thereafter. The attorney filed a Notice of Appeal with the Montana Supreme Court but failed to file an opening brief, and the appeal was dismissed. Attorney's fees were awarded to the plaintiff, and Judgment was entered against the client for the fees with interest accruing. The attorney appealed the Judgment then made a settlement offer to the plaintiff's attorney. The plaintiff rejected and made a counteroffer. The attorney paid the plaintiff the amount of the counteroffer from his own funds and dismissed the appeal. The formal complaint alleges violations of Rules 1.1, 1.2, 1.3, 1.4 and 3.2, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure and to pay costs of the disciplinary proceedings. *In re Karl P. Seel*, MT PR 09-0612 (2010).

Failure to communicate. (Reciprocal discipline) The North Dakota Disciplinary Board filed a Petition for Discipline regarding three separate matters wherein it alleged the following. Attorney represented a client to defend it in a civil action filed in Montana. The attorney failed to respond to the clients' insurer's status requests and failed to notify his clients of mediation. At the mediation, the attorney negotiated an \$80,000 settlement without his clients' or his clients' insurer's authority. The attorney personally funded the settlement, depositing the money into his firm's trust account to be remitted to opposing counsel. The attorney represented another client regarding a civil action filed against him in Montana. The attorney failed to keep his client informed of important events, deadlines and discovery obligations. The attorney appeared at the Court-ordered mediation without a responsible decision-maker, as ordered. As a result, the Court sanctioned the client and ordered him to pay the plaintiff's costs incurred in attending the mediation. The attorney, thereafter, failed to respond to discovery requests. As a sanction, judgment was entered in favor of the plaintiff on liability; final judgment was entered against the attorney's client in the amount of \$143,713. The attorney falsely assured his firm that he had kept his client informed and falsified backdated letters so it appeared he had done so. The firm paid the judgment against the client. The attorney represented a plaintiff who sued a health care professional in North Dakota. The attorney failed to diligently seek and obtain an expert opinion, and the opposing party moved to dismiss the case. The Petition for Discipline alleged violations of Rules 1.2, 1.3, 1.4, 1.15 and 8.4, NDRPC. The attorney submitted a Consent to Discipline wherein he consented to suspension from the practice of law for six months and a day. The North Dakota Supreme Court accepted a Stipulation, Consent to Discipline and Recommendation of Hearing Panel and suspended the attorney from the practice of law in North

Dakota for a period of six months and a day and ordered him to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2002), suspending the attorney from the practice of law in Montana for a period of six months and a day and ordering him to pay costs. *In re Shane D. Peterson*, MT PR 09-0416 (2009).

Failure to communicate. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to

assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to communicate. Attorney was retained by his client to pursue wage and constructive wrongful discharge claims. Without consulting his client, the attorney did not pursue the wrongful discharge claim nor did he advise his client that he would not pursue that claim. The complaint filed asserted only wage claims. The client testified that the attorney advised him that the wrongful discharge claim would be filed separately at a later date. No summons was issued at the time the attorney filed the complaint, but rather he caused the summons to be issued at a later date. He failed to serve the summons until after the applicable statute of limitations had expired. The opposing party filed a motion to dismiss, which was granted. The attorney appealed to the Supreme Court but failed to request a transcript of the hearing. The attorney's appeal was unsuccessful. The attorney failed to keep his client informed about the status of his case nor did he timely or regularly respond to his client's attempts at communication. He failed to advise his client of the district court's decision or his appeal of the decision. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC and ordered he receive a public censure and pay costs of the disciplinary proceedings. *In re Hennessey*, MT PR 06-0794 (2008).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the attorney acknowledged in a *Conditional Admission and Affidavit of Consent* submitted prior to filing a formal complaint, that his acts or omissions during his representation of a client violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC. The Montana Supreme Court ordered the attorney receive a public censure by the Court and to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 08-0169 (2008).

Failure to communicate. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed, and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Failure to communicate. Attorney was retained by two clients to represent them in their dissolution matters. The first client paid the attorney a \$400 retainer, plus \$190 for filing fees and despite numerous attempts to contact the attorney, never heard from him again. The second client paid the attorney \$1,250, and the attorney filed the Petition for Dissolution and served the respondent. After the respondent returned the Acknowledgment of Service form, the attorney failed to file it with the Court. He abandoned his client, failed to communicate with her despite her numerous attempts to contact him, and failed to protect her interests, including, but not limited to, returning his unearned fees. The attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d) and 8.1(b), MRPC. The Court extended the attorney's existing suspension for two additional years and ordered him to pay the costs of the disciplinary proceedings. Any reinstatement is conditioned on his refund of \$400 to the first client and \$1,000 to the second client. *In re J. Stuart Bradshaw*, MT PR 06-0419 (2007).

Failure to communicate. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for

two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees. The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Kenneth Wesson*, MT PR 06-0519 (2007).

Failure to communicate. The allegations in the Formal Complaint included the following. Attorney was retained by her clients to represent them regarding a Petition for Grandparent Visitation Plan filed by their children's maternal grandparents. The parties attended a settlement conference, at which a tentative settlement was reached. Opposing counsel sent a draft of the grandparent/grandchild contact plan to the attorney. The attorney's clients advised the attorney they wanted certain changes made to the plan. Until the clients terminated the attorney's services, the attorney failed to communicate with them despite their numerous attempts. The attorney also failed to respond to opposing counsel's inquiries regarding his proposed contact plan. The settlement master filed two status reports, wherein he recommended the Court approve opposing counsel's draft of the proposed contact plan. Opposing counsel moved the court to adopt the proposed plan and the settlement master's recommendations. In the meantime, the opposing party contacted the attorney's clients and informed them that it did not appear they were receiving information that opposing counsel had been sending to their attorney. The opposing party suggested they draft their own proposed final plan and submit it to opposing counsel. Opposing counsel wrote the attorney, indicating that the parties had reached an agreement as to the language and terms of the plan. Opposing counsel enclosed a proposed final draft and requested the attorney submit it to her clients for their signatures and return it to him.

The attorney did not forward the letter or draft to her clients. The parties signed a new proposed plan; however, the court issued its Findings of Fact, Conclusions of Law, Judgment and Order Implementing Grandparent/Grandchild Contact Plan, which did not encompass the agreed upon changes. The clients filed a motion with the court to terminate their attorney, which was granted. The clients also filed a *pro se* Motion to Modify the Court's Order, which the court denied. The attorney had been suffering from significant health problems. She failed to withdraw from representing her clients when her physical condition materially impaired her ability to represent them. According to the Montana Supreme Court's Order, in the attorney's *Conditional Admission and Affidavit of Consent* submitted to the COP, she acknowledged that her acts or omissions during her representation of clients violated Rules 1.1, 1.3, 1.4, 1.16(a)(2) and (c), MRPC. The COP recommended to the Montana Supreme Court that her tendered admission be accepted. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for five years and payment of costs of the disciplinary proceedings. The Court further ordered that during probation, the attorney shall not engage in the private practice of law unless she is under the direct supervision of another attorney. *In re Paulette Ferguson*, MT PR 06-0701 (2007).

Failure to communicate. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Matthew Ereksen*, MT PR 07-0105 (2007).

Failure to communicate. The attorney was retained by three clients to pursue family law matters. The first client hired the attorney to represent him in a child support proceeding and to complete a parenting plan. The second client hired the attorney to represent her in dissolution of her marriage. The third client hired the attorney to pursue an action for the dissolution of his marriage. In these matters, the attorney failed to keep the client informed of the status of the

matters, failed to respond to inquiries, failed to act with reasonable diligence, failed to complete the work for which the attorney was retained, and, upon termination, failed to return any unearned fee. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 1.5, and 1.16(d). The Court ordered the attorney indefinitely suspended for not less than one year and ordered the attorney to pay the costs of the disciplinary proceedings. *In re Kenneth Wesson*, MT PR 06-0157 (2006).

Failure to communicate. Attorney was hired by the client to probate an estate. During representation, the attorney failed to attend meetings with the client, the heirs of the estate, and their attorneys. The client made over 40 phone calls to the attorney, none of which were returned. The client traveled from out-of-state to meet with the attorney at his office. After this meeting, there was no further contact between the attorney and client. The attorney also failed to inform the client of petitions and judgments entered against her. The attorney violated Rule 1.4, MRPC, by failing to keep his client reasonably informed and failing to respond to her status requests. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re J. Stuart Bradshaw*, MT 05-095 (2005).

Failure to communicate. Attorney was hired by the client to represent him in several actions. For five months, the attorney failed to prepare or file any pleadings in the client's bankruptcy proceeding. Attorney also failed to prepare or file the client's pleading in another action, resulting in a default judgment. No notice of default was given to the client. The attorney did not return the client's phone calls or provide information regarding the status of the case. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 1.4, MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Clifton Caughron*, MT 05-100 (2005).

Failure to keep client reasonably informed. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting several violations, including violation of Rule 1.4, MRPC. The Montana Supreme Court accepted the attorney's admission and publicly censured him. He was also ordered to pay COP and ODC's costs of proceedings. *In re Karl Seel*, MT 05-527 (2005).

Lack of communication. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file.

As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Failure to communicate. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Richard Musick*, MT 05-607 (2006).

Lack of communication. In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Cort Harrington*, MT 05-096 and MT 05-591 (2006).

Failure to communicate. Attorney was hired by client to handle a probate proceeding while on disability/inactive status from a previous disciplinary matter. In a *Conditional Admission and Affidavit of Consent*, the attorney admitted violating several rules, including Rule 1.4, MRPC. The Montana Supreme Court accepted the admission and revoked the attorney's disability/inactive status in favor of a three-year suspension from the practice of law. Upon petition for reinstatement, the attorney would have the burden of meeting the criteria set forth in Rule 28(G), RLDE, given his acknowledgement of his physical or mental disability or infirmity. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Joseph Bradley*, MT 04-196 (2005).

Failure to consult. Attorney was hired to represent landowners in a condemnation action. During this representation, the attorney failed to respond to settlement offers, missed litigation deadlines, failed to attend a settlement conference, failed to consult with his clients, and failed to respond to an expert witness' attempts to discuss the case. In response to this and various other allegations, the Montana Supreme Court determined the attorney violated Rule 1.4, MRPC, suspended the attorney for a fixed term of seven months, ordered him to pay the COP and ODC's costs of disciplinary proceedings, and required him to file an affidavit with the Court within 20 days after the effective date of suspension, pursuant to Rule 32, RLDE, showing he had complied with the Court's Order. When the attorney failed to pay the ODC's costs or file the Rule 32 Affidavit, the Court indefinitely suspended him until such time as he complies with the requirements of Rule 32, RLDE, at which point the seven-month suspension that the Court originally ordered will begin. *In re Peter LaPanne*, MT 04-325 (2005).

Failure to communicate. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. During representation of these clients, the attorney failed to keep his clients informed of the status of their appeals and did not respond to their inquiries regarding their cases. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set for in the formal complaint, including Rule 1.4, MRPC, and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Gary Wilcox*, MT 04-326 (2005).

Failure to keep client reasonably informed/failure to reasonably explain matter. The client hired the attorney in order to obtain a parenting plan for her minor child. Over several months, the attorney met with the client only two times, and never provided her with a copy of, or had any communication regarding a Final Parenting Plan. He failed to inform the client of her trial date and agreed to a Final Parenting Plan without her consent. The attorney did not notify the client of the entry of the Final Parenting Plan until months after the Court approved it, making any possible legal challenge extremely difficult. The Montana Supreme Court determined the attorney had violated Rule 1.4(a) and (b), MRPC, along with several others and ordered he be suspended for 60 days. The attorney was also required to pay the costs of the COP's proceedings against him pursuant to Rule 9(A)(8), RLDE. *In re Benjamin Anciaux*, MT 03-061 (2005).

Failure to communicate. In a tendered admission, the attorney admitted he failed to act with reasonable diligence and failed to communicate adequately with his client in a personal injury action over a two-year period. The Commission on Practice concluded that he violated Rule 1.4, MRPC. The Commission on Practice reviewed the tendered admission and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure for this and another violation. *In re Walter Hennessy*, MT 04-283 (2004).

Failure to return phone call; failure to consult. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rule 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a year for this and other conduct violative of the MRPC. *In re David Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC.

Failure to act; failure to consult. The attorney submitted a tendered admission to a violation of Rule 1.4(a), MRPC, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re David Wing*, MT 03-389 (2003).

Failure to obtain informed consent to not appeal. Attorney was appointed to represent a felon starting at his sentencing hearing. Upon the attorney's initial meeting with the client, problems arose, and the attorney ceased her communications with him. At the sentencing hearing, the attorney passed along a request from the client made at their initial interview, that he be sentenced to prison. Following the sentencing hearing, the attorney failed to pursue her client's appeal or properly withdraw as the attorney of record. Pursuant to a Rule 26, MRLDE, tendered admission, the attorney admitted violating Rule 1.4, MRPC, as well as other rules of professional conduct. In particular, the Commission on Practice found the attorney failed to properly inform her client of the status of his case and failed to secure his consent for the sentencing request and informed consent to not pursue an appeal. The Commission on Practice reviewed the tendered admission and recommended approval to the Montana Supreme Court. The Court approved the admission and suspended the attorney for 30 days. *In re Paulette Ferguson*, MT 03-114 (2004).

Failure to inform client of status of case. Attorney was hired to represent client in an uncontested dissolution of marriage in December 2001. In September 2002, the Commission on Practice ordered the attorney to provide it with a plan to complete the dissolution the following month. The attorney failed to do so. When ordered to explain himself, the attorney again failed to act. The attorney tendered his admission to misconduct pursuant to Rule 26, MRLDE, which the Commission on Practice reviewed and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure. The Commission on Practice found Rule 1.4, MRPC, violated by the attorney's admitted failure to keep his client informed as to the status of his case. *In re Cort Harrington*, MT 03-112 (2004).

Failure to advise as to status of medical liens. The attorney withheld funds from the settlement and placed the money in his trust account, ostensibly to pay a Medicaid lien. Attorney then took the money from the trust account to settle a claim of malpractice brought against him by another client. The attorney admitted not advising his client of his failure to pay the lien and admitted violating Rule 1.4, MRPC, among others. Attorney admitted the violations pursuant to

a Rule 26, MRLDE, tendered admission, which was reviewed by the Commission on Practice, which recommended approval to the Montana Supreme Court. The Court suspended the attorney indefinitely for a period of not less than four years. *In re John S. Yoder*, MT 02-753 (2003).

Lack of communication regarding bankruptcy matters. Attorney hired in unrelated bankruptcy matters. The Commission on Practice found the attorney failed to keep his clients reasonably informed as to the status of their cases and failed in one case to respond to his client's reasonable requests for information. The attorney failed to return telephone calls and missed a scheduled appointment as well. The Montana Supreme Court suspended the attorney for a period of not less than one year for violations of Rule 1.4, MRPC, and other misconduct. *In re Jere Morris*, MT 01-170 (2001).

Repeatedly making untrue statements to client. Attorney undertook representation of a client in a personal injury action in February 1995. By July 1997, the attorney had done little work on the case beyond preparing a complaint that was not filed. On several occasions, the attorney told the client an action had been filed on her behalf. The client's father checked with the clerk of court in December 1998 and determined no action had been filed. In January 1999, the client confronted the attorney and the attorney claimed he did not file the case because he did not have the necessary filing fee. At a hearing on the matter, the attorney testified he did not file the case because it was not one he could "make immediate money and cash flow on." The Commission on Practice concluded several rules of professional conduct had been violated, including Rule 1.4, MRPC. The Montana Supreme Court rejected the attorney's constitutional challenges and contentions that *ex parte* communications between special counsel and the Commission violated MCA § 2-4-613. The Montana Supreme Court adopted the Commission's conclusions and suspended the attorney for 60 days. *In re V. Joe Leckie*, MT 00-295 (2001).

Failure to communicate; failure to respond to reasonable requests for information. Attorney was hired to represent a Florida man in a paternity and child support matter. The client underwent DNA testing at the request of the attorney and the state Child Support Enforcement Division that showed he was not the father of the child for whom he was paying support. The attorney thereafter failed to take action on behalf of his client or respond to his client's requests. Eventually, the client learned from the court clerk that no proceedings had been filed and demanded the return of his retainer. The Commission on Practice determined the attorney's conduct violated Rule 1.4, MRPC, as well as other rules of conduct. The Montana Supreme Court upheld the Commission's findings and suspended the attorney for an indefinite period of not less than seven months. *In re Timothy Lape*, MT 99-681 (2001).

Failure to keep in contact with client. Attorney was hired to pursue a legal malpractice claim on behalf of the client. Upon accepting a retainer, the attorney left Montana, telling the client he had a job that would keep him out of the state for three months, but would take up the case upon his return. The attorney gave the client a phone number at which he could allegedly be reached. However, the client reported the number was disconnected when he tried to call the attorney. The attorney did not provide the client with any other address or contact information. The Commission on Practice concluded the attorney's conduct violated Rule 1.4, MRPC. The Montana Supreme Court indefinitely suspended the attorney for a period of no less than three years for this and other professional misconduct. *In re Christopher Bowles*, MT 98-719 (2000).

Attorney failure to advise client of attorney's inability to attend hearing. Client accused of DUI hired attorney to represent him. The attorney told the client he did not need to attend an upcoming omnibus hearing. The attorney then failed to attend the hearing himself because of an illness. The COP rejected the attorney's motion to admit polygraph tests in evidence at trial under *State v. Staat*. The Commission on Practice found the attorney violated Rule 1.4, MRPC, for failing to advise his client that he could not attend the omnibus hearing. For this and other violations, the Montana Supreme Court suspended the attorney--already serving a three-year suspension--from the practice of law for a term of not less than five years. *In re Brett Asselstine*, MT 98-551 (2000).

Failure to advise clients of trial date; failure to inform clients of judgment. Clients hired a relatively experienced attorney to handle a breach of contract action. In the course of the representation, the attorney decided she needed to withdraw because of personal difficulties and did very little work on the case. Believing she had been replaced, she filed a motion to withdraw with the court ten days before trial. The judge denied the attorney's motion to withdraw and the attorney remained counsel of record. The attorney failed to advise her clients of the impending trial date. The attorney failed to appear at trial and a default was entered against her clients. The clients learned of the judgment against them when they received a bill of costs from opposing counsel. The Commission on Practice found the attorney had violated Rule 1.4, MRPC, and the Montana Supreme Court adopted the Commission's findings. The Court suspended the attorney for one year for this and other violations of the rules of professional conduct. *In re Debra Cox*, MT 98-021 (1998).

Failure to return calls; failure to deliver requested accounting. The Commission on Practice found two violations of Rule 1.4, MRPC, in an 11-count complaint against a suspended attorney who the Montana Supreme Court disbarred for repeated misconduct. The first violation arose in the course of representing a woman in an adoption proceeding. The client delivered necessary paperwork to the attorney. Several weeks later, the client sought an update. She called and was told the attorney would contact her. The attorney never did. The client then stopped at the attorney's office and waited until the attorney could see her. The attorney explained she was having difficulty getting the work done because secretaries kept leaving her employment. The client continued to call the attorney, but received no further replies. The client eventually wrote to the attorney and requested a refund, which never arrived. In the second case, the attorney was representing a client accused of felony theft. The attorney received a retainer, but later withdrew, citing the client's inability to pay additional fees. The attorney promised to return the unearned portion of the retainer to the client's new attorney, but never did so. The client never received an itemized statement from the attorney explaining how the retainer was spent. The client made numerous attempts to contact the attorney to obtain the unearned portion of the retainer, but never received a reply. When the client's friend went to the attorney's office to collect the funds, she found the office locked. *In re Catharine Sapp-LeClaire*, MT 97-608 (1998).

Failure to communicate with client/friend. Attorney represented a client who sought to sue the State of Montana. The attorney had a social relationship with the client, whom he considered a friend. The attorney did not enter into a formal written contingent fee agreement. During the

course of the representation, the attorney also failed to communicate in writing with the client, considering it unfriendly. The attorney repeatedly failed to maintain contact with the client and failed to adequately move the case forward. The attorney's file lacked any written correspondence, notes from telephone correspondence or office visits indicating the attorney had contact with his client. The Montana Supreme Court found multiple violations of the MRPC, including Rule 1.4, and suspended the attorney for three years. *In re Brett Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Failure to advise client/failure to keep client informed. The Montana Supreme Court disciplined the attorney for conduct stemming from three unrelated bankruptcy matters. In one, the attorney failed to communicate with his clients concerning the progress and preparation of their bankruptcy proceedings. In the second case, the attorney failed to inform his client about the consequences under the bankruptcy code applicable by reason of her husband's death. In the third case, a Chapter 13 proceeding was converted to a Chapter 7 proceeding, a conversion which was adverse to his client's interests, and the attorney failed to inform his clients about the consequences of the conversion. The Commission on Practice found three violations of Rule 1.4, MRPC, for the above-listed failures. The Montana Supreme Court suspended the attorney for 60 days for these and other violations of the rules of conduct. *In re Jere Morris*, MT 95-061 (1996).

Reasonable information about the status of a case. Attorney admitted failing to keep his client reasonably informed about the status of his case and failing to properly comply with his client's reasonable requests for information. The Montana Supreme Court suspended the attorney for five months for violating Rule 1.4, MPRC, and rules governing the protection of client property. *In re Michael Tramelli*, MT 93-117 (1995).

Misleading clients about availability of Macedonian infants for foreign adoption. The attorney represented American families who sought to adopt foreign infants from Macedonia. According to the Commission on Practice's Findings of Fact, the attorney was expected to meet one couple in Macedonia after assuring them the government was going to "roll out the red carpet" for them and that the parents were going to be able to visit an orphanage and pick out the child they wanted. The attorney arrived four days late, and the couple was informed the Macedonian government was adverse to foreign adoptions. During his time in Macedonia, the attorney pursued other ventures relating to the importation of rugs and artwork into the United States and the representation of a munitions dealer who sought to do business with Macedonia. The Commission on Practice found the attorney misled his clients as to the availability of infant children for adoption and the prevailing attitude of the Macedonian government toward foreign adoptions. The Montana Supreme Court disbarred the attorney for violating several rules of professional conduct, including Rule 1.4, MPRC, for failing to keep his clients properly informed about the status of their adoption. *In re J. Douglas Alexander*, MT 94-358 (1995).

Status of probate matters. Attorney who failed to take action on the administration of numerous estates for periods ranging from 12 to 17 years was found to be in violation of Rule 1.4, MRPC, for failing to keep his clients informed as to the status of the probate matters. The attorney had open estates dating back to 1975 when he came before the Commission on Practice. The Montana Supreme Court suspended the attorney for not less than one year for

this and other violations of the Montana Rules of Professional Conduct. *In re John L. Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Failure to explain or communicate known facts; failure to keep clients reasonably informed.

The Montana Supreme Court found the attorney violated both Rules 1.4(a) and (b), MRPC, as well as other rules of professional conduct, in the course of two unrelated representations. In the first, the attorney was hired to represent homeowners in a dispute with their contractor. When the contractor filed a complaint against the clients, the attorney accepted service, but failed to inform his clients of the litigation or answer the complaint. When default was entered against the clients and their home scheduled for sale, the clients learned about the impending auction through a third-party, not their attorney. In the second case, the attorney was hired to represent a plaintiff who purchased property at auction that was encumbered by undisclosed liens. The attorney was hired in 1988 and rarely communicated with the clients. He told the clients a federal judge would hear their case in November 1990, when he had never filed a complaint. The Montana Supreme Court indefinitely suspended the attorney from the practice of law for violating Rules 1.4(a) and (b), MRPC, and other rules of conduct. *In re James Johnstone*, MT 92-279 (1993).

Failure to respond to letters and telephone calls; failure to provide accurate information.

A creditor hired the attorney to pursue a debt-collection matter. A stipulation was reached with the debtor in 1988. The stipulation was violated almost immediately, but the attorney took no action to enforce the terms of the agreement. Despite numerous attempts by the client to elicit action, the attorney did nothing. Prior to October 1989, the attorney responded to his client's requests "infrequently and tardily, sometimes without candor," according to the Commission on Practice findings. After October 1989, the attorney stopped responding altogether. In August 1990, the client hired substitute counsel. The attorney delayed delivery of the client file and didn't provide the client with a copy of the 1988 settlement until 1992. The Montana Supreme Court disbarred the attorney for violation of Rule 1.4, MRPC, and other rules of conduct, some of which involved expropriation of funds from an estate he was representing. *In re Romine*, MT 92-251 (1993).

Failure to inform clients of depositions; failure to advise as to status of matter.

Several clients hired attorney to represent them in a "wrongful hiring" claim. The clients made numerous calls to the attorney regarding the status of the case, and the attorney repeatedly promised to prosecute the claims. Two and one-half years later, the attorney filed a complaint in the case. Attorney's clients answered the defendant's discovery requests in June, but the attorney failed to turn them over to the defendants until December of the same year. The attorney failed to inform his clients of their scheduled depositions and failed to attend the depositions. Attorney failed to respond to defendants' subsequent sanctions motion and failed to attend the sanctions hearing, which resulted in the court dismissing the case and entering judgment against the plaintiffs. The clients subsequently terminated the

relationship, hired another attorney, and the case settled. The Commission on Practice found that the first attorney failed to act diligently and failed to reasonably communicate with his clients and keep them informed as to the status of their proceeding. He was suspended for thirty days and ordered to reimburse his clients for fees paid to the second attorney. *In re Robert J. Wood*, MT 92-043 (1993).

RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The scope of the representation, any changes in the scope, and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing. This paragraph does not apply in any matter in which it is reasonably foreseeable that total cost to a client, including attorney fees, will be \$500 or less.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance or support or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

General Violations:

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to communicate fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that

materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure to communicate rate of fees and scope of representation in writing. Attorney was retained to assist his client regarding his supervised probation for a criminal conviction in Montana. His supervision was subsequently transferred to California, and the State of California required him to submit to electronic monitoring, which caused problems in connection with his job as truck driver. The attorney was paid \$2,000 to represent his client regarding the electronic monitoring imposed by the State of California. The attorney did not communicate the scope of his representation and the basis or rate of the fee to the client in writing, did not deposit the \$2,000 into a trust account and has not had a trust account for many years. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.5 and 1.18, MRPC, for his failure to communicate, in writing, the scope of the representation and the basis or rate of the fee and expenses for which his client would be responsible, and for his failure to deposit his client's funds into a trust account. The COP recommended the attorney be disciplined by public censure and probation for two years, subject to certain conditions, and be assessed the costs of the disciplinary proceedings for violating Rules 1.5 and 1.18, MRPC. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety. *In re Michael R. Tramelli*, MT PR 11-0091 (2012).

Improper fees. (Reciprocal Discipline) The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in

dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Improper fee. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Failure to communicate rate of fees and scope of representation in writing; unreasonable fee.

Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the

Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Failure to communicate fee arrangement in writing; unreasonable fee. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained to handle a bankruptcy for his clients, who paid him a \$1,800 flat fee. The attorney deposited the money into his operating account and not into his trust account; he took the fee before it was earned. The attorney failed to communicate the fee arrangement and the scope of his representation to his clients in writing. The attorney failed to file a bankruptcy petition for his clients. He accepted the representation despite his large caseload. The formal complaint alleges violations of Rules 1.3, 1.5, 1.15, 1.16(a) and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure, to be placed on probation for two years, and to pay costs of the disciplinary proceedings. *In re Stephen R. McCue*, MT PR 09-0611 (2010).

Failure to communicate fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for

status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to communicate fees and scope of representation in writing. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the

treatment program and disclosing any current or potential issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Matthew Ereksen*, MT PR 07-0105 (2007).

Failure to return fees. The attorney was retained by three clients to pursue family law matters. The first client hired the attorney to represent him in a child support proceeding and to complete a parenting plan. The second client hired the attorney to represent her in dissolution of her marriage. The third client hired the attorney to pursue an action for the dissolution of his marriage. In these matters, the attorney failed to keep the client informed of the status of the matters, failed to respond to inquiries, failed to act with reasonable diligence, failed to complete the work for which the attorney was retained, and, upon termination, failed to return any unearned fee. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 1.5, and 1.16(d). The Court ordered the attorney indefinitely suspended for not less than one year and ordered the attorney to pay the costs of the disciplinary proceedings. *In re Kenneth Wesson*, MT PR 06-0157 (2006).

Collecting fees inconsistent with terms of agreement; unapproved fee collection; unreasonable fees. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admits violating Rule 1.5, MRPC, and several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Clifton Caughron*, MT 05-100 (2005).

Unreasonable fees. Attorney was hired to represent a widowed, elderly woman in three separate matters: termination of a Charitable Remainder Trust (CRT), a tort action and a conservatorship proceeding. She had previously executed an unlimited power of attorney for her 71-year-old nephew to manage her assets. Between the nephew's mishandling of her assets and the attorney's fees charged to the client, her \$1,000,000 estate was depleted to less than \$5,000. The attorney originally signed a fee agreement with the client to terminate the CRT for an hourly rate of \$125. The CRT consisted of \$365,000 of the client's \$1,000,000 estate. The CRT took less than one month to terminate, and all of the beneficiaries voluntarily relinquished their interests in the CRT. The client paid the attorney over \$8,300 for the 65.9 hours of work he claimed to have performed in the matter. The attorney signed a second, separate fee agreement two weeks later related to the tort action. The agreement provided that the client would pay the attorney a \$20,000 retainer, which would be billed against at \$125 per hour. It further provided that they would divide any recovery in the action 35% to the attorney and 65% to the client. Prior to the resolution of the case, the attorney was removed as the attorney and it ultimately settled for \$150,000. However, he had already collected approximately \$175,000 for his work performed in the tort action based on his hourly agreement. Three years later, the attorney received an additional \$50,000, but based on the attorney's accounting, it is impossible to determine to which litigation the \$50,000 retainer fee applied. He contended he used it to cover the cost of his work in the third matter, the conservatorship action, although it had not begun until 18 months after the retainer was collected. The attorney did not place either of the retainers into an IOLTA account or a client trust account, but rather placed the \$20,000 and \$50,000 retainers directly into his operating account. The attorney next modified the first fee agreement relating to the CRT termination from the hourly fee arrangement for work already completed to a contingent fee

arrangement. He wrote the client a letter informing her that the contingent fee for his representation of her in the CRT termination, resolved almost two years earlier, would be one-third of the amount he had “recovered” through his prosecution of the uncontested termination proceeding. The elderly woman signed the consent form at the bottom of the letter. A few months later, the attorney further refined the fee agreement relating to the CRT termination through a letter to the nephew. He acknowledged receipt of \$10,000 and confirmed he would receive \$10,000 monthly installments for the remainder of the year, totaling \$70,000, plus an additional \$50,000 the following year. The attorney revised the agreement a final time, three years later, through a “supplemental attorney-client fee contract” intended to replace the original hourly fee agreement in its entirety and to be “retroactively effective” from the date of the original agreement. The supplemental agreement provided that the attorney would receive one-third of \$365,000, which was the value of the CRT, for a total of \$121,545. The client paid the attorney a total of \$296,545 for his services in the three separate matters. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 1.5, MRPC, for his unreasonable fee in the CRT termination action and Rules 1.15 and 1.18, MRPC, for failing to deposit the \$20,000 and \$50,000 retainer fees into a trust account. The Montana Supreme Court ordered the attorney receive a public censure by the Court with a 60-day suspension commencing as of the date of the public censure, and to pay the costs of the disciplinary proceedings. *In re Joseph Engel*, 2008 MT 42, MT 05-174 (2008).

In a *Verified Conditional Admission, Stipulation Regarding Extension of Current Suspension, Payment of Assessed Costs and Restitution to Affected Clients* the attorney admitted to violation of MRPC Rules 1.3, 1.5, and 1.15. The Montana Supreme Court accepted the admission and ordered that the attorney be disciplined by extension of his current suspension for one additional year. The attorney, therefore, is indefinitely suspended for a minimum of three years. Further, the Court ordered the attorney pay restitution to the affected clients and costs to the ODC and COP. *In re Brian Atcheson*, MT PR 06-0781 (2006).

Unearned portion of retainer deposited in attorney’s operational account; failure to clarify type of fee agreement; billing client for legal work after termination. The Commission on Practice found the attorney violated Rule 1.5, MRPC, in three ways. First, in representing a client in an employment discrimination action, the attorney agreed to work at an hourly rate. The client paid the attorney a retainer. The entire retainer was deposited in the attorney’s operational account rather than the trust account. The attorney admitted he probably did not earn approximately 28-percent of the retainer fee. In an unrelated case, the attorney agreed to represent a married couple in a dispute involving a modular home. The case was taken on a contingent fee basis. The clients also paid the attorney a retainer and the attorney advised his clients he would need money every month to assist with costs. When the clients requested an accounting of the retainer, the attorney told them the retainer was simply intended to cover overhead and salary for the attorney and his employees and that the attorney was charging at an hourly rate, despite the earlier representation that the case would be handled on a contingent basis. The attorney also failed to put the contingent fee agreement in writing. The Commission found a third violation of Rule 1.5, MRPC, when the attorney charged his client legal fees related to his withdrawal from the case after he had been fired. The Commission did not specify which subsections of Rule 1.5, MRPC, were violated by the attorney’s conduct. The attorney admitted to the above violations in a Rule 26, MRLDE, admission. The Commission on Practice reviewed

the admissions and recommended the Montana Supreme Court approve the admission. The Court suspended the attorney for an indefinite period of not less than two years for these and other violations of the rules of conduct. *In re Brian Atcheson*, MT 04-091 (2004).

Rule 1.5(a):

Collecting fee then failing to perform legal services. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights matter. Throughout the following year, the attorney failed to complete any legal services on his client's behalf and failed to reasonably communicate with him unless his client initiated contact. He failed to refund all or part of the client's retainer despite promises to do so. By collecting a fee and failing to perform services to his client's satisfaction, the attorney charged an unreasonable fee in violation of Rule 1.5(a), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than one year, and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Collecting unreasonable fees. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. The attorney failed to complete the work she was hired to do, and her clients were forced to hire and pay another attorney \$855 to complete their estate planning documents. The attorney violated Rule 1.5(a) by collecting an unreasonable fee from her clients when she failed to complete the work. Later, her clients obtained a \$2,805 default judgment against her for return of their full retainer and documents, plus costs expenses, which the attorney paid in full and returned the original documents. In relation to the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The clients paid an initial \$100 for filing fees and later paid the attorney \$2,500 by credit card for her retainer. The attorney did the initial work to begin the proceedings but failed to complete it and to communicate with her clients. Her clients were forced to hire and pay a new attorney \$500 plus costs to complete the matter. The attorney failed to refund any portion of the retainer despite knowing her clients were due at least a partial refund and despite their request. After ODC filed its Complaint, the attorney returned the full retainer. The attorney violated Rule 1.5(a) by collecting an unreasonable fee when she failed to complete the work she was hired to

do. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than seven months and pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Charging clients for out-sourced legal work unreasonable cost. Attorney was hired to file a legal malpractice claim against her clients' former attorney for failing to timely pursue their medical malpractice claim after their infant son died, which the district court dismissed as time-barred. The defendant attorney admitted in the legal malpractice lawsuit he owed his former clients a duty of care and had breached the standard of care by missing the statute of limitations, claiming however that his breach did not cause them any injuries or damages. The district court agreed and granted him summary judgment, which the attorney successfully appealed. The attorney retained co-counsel to assist with the trial and entered into a fee-splitting arrangement with him; the clients did not provide written consent and did not have a written agreement with their attorney's newly acquired co-counsel. After the trial, a defense verdict was returned, which the attorney successfully appealed but had outsourced the brief writing to her co-counsel unbeknownst to the clients. The clients requested another attorney attend mediation on their behalf due to their growing frustration and dissatisfaction with their current attorney, and they settled their claims. Former co-counsel who briefed the appeal had asserted a lien against the settlement proceeds for his fees and costs. At mediation, the attorney asserted she had incurred approximately \$36,000 in costs but later claimed an additional \$45,000 in costs in communications with defense counsel and counsel who also attended mediation with her clients. Before and after mediation, the clients had requested an accounting of the attorney's costs incurred and proposed distribution in connection with their case. After receiving the settlement check, the attorney delivered a disbursement statement to her clients, at which time they first learned she had claimed the additional \$45,000 in costs. She included entries for a legal research consultant and an outside attorney who drafted briefs, which were not costs identified in the contingency fee agreement to be reimbursed by the client. Further, she did not notify her clients or obtain their consent to the charges or to her out-sourcing legal work for which they hired her to do. The fees and costs issue was litigated in district court with the Court awarding the attorney's contracted co-counsel his costs and share of the contingency fee, and allowing the attorney her \$36,000 in costs disclosed prior to mediation but disallowing the additional \$45,000 in costs disclosed thereafter. Costs were ordered to be paid from the gross recovery with the remainder divided equally between the clients and the attorneys, which the attorney unsuccessfully appealed. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation wherein it concluded the attorney violated Rule 1.5(a), MRPC, by charging or collecting an unreasonable fee or an unreasonable amount for expenses by charging her clients for the cost of outsourcing legal research and writing. For this and other misconduct and rule violations, COP recommended the attorney, who was on indefinite suspension, be disbarred and pay costs of the disciplinary proceeding. After the attorney filed objections and

ODC responded, the Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney for violating Rules 1.4, 1.5(a), 3.3(a), 3.4(b), and 8.4(c), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 19-0017 (2020).

Charging unreasonable fees and costs in wrongful termination lawsuit. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of the MRPC. The attorney admitted he was retained and paid \$1,500 to represent his client concerning a potential civil rights violation and wrongful discharge claim. The attorney admitted he violated Rule 1.5(a), MRPC, when he charged and attempted to collect an unreasonable fee of \$6,162.76 from his client, which included \$2,970 for text messages, \$1,199 for unnecessary hand-delivery of the Complaint for filing in federal court despite being a registered electronic filer, and \$618.75 for preparing his response to his client's ethics complaint submitted to ODC. For this and other misconduct, the attorney admitted violating Rules 1.3, 1.5(a), and 1.5(b), MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission, wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by COP, pay costs of the disciplinary proceedings, send his client a letter of apology, and be barred from attempting to collect any further fees or expenses from his client for violating Rules 1.3, 1.5(a), and 1.5(b), MRPC. *In re Douglas Marshall*, MT PR 18-0605 (2019).

Charging unreasonable fee in immigration case. Attorney, practicing immigration law out-of-state, was retained to assist his client in renewing his employment authorization documents. He was paid \$700 to investigate whether the U.S. Government had an existing file concerning his client. He was unable to locate a file and concluded no ability existed to seek relief for his client. The attorney subsequently provided his client with a "letter of protection" and Form G-28 "Notice of Appearance" to show Immigration officials he was represented by counsel in the event he was ever detained. One year later, the attorney was paid an additional \$1,250; however, the purpose of the representation was disputed, and no written agreement existed outlining the scope of the representation. The attorney provided no additional services for his client. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that for this and other misconduct, the attorney violated Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney be publicly admonished by the COP, complete an office practice management course, submit a written plan of management practice and policy changes, refund his former client \$1,250 with interest, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. *In re Eduardo L. Encinas*, MT PR 14-0250 (2015).

Unreasonable fee and failure to communicate the fee arrangement in writing. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities

because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Accepting retainer to initiate legal action and failing to provide legal services or refund the retainer. Attorney was hired to pursue a legal malpractice claim against another lawyer. The attorney accepted a \$1,000 retainer but failed to perform any legal services or refund the money. The Commission on Practice found a violation of Rule 1.5(a), MRPC, for charging an unreasonable fee. The Montana Supreme Court suspended the attorney indefinitely, for a period of not less than three years, for violating 1.5(a) and other rules of professional conduct. *In re Bowles*, MT 98-719 (2000).

Elderly client charged excessive fees for minimal legal work. Working on behalf of an elderly client, the attorney drafted a will, revised a lease agreement, drafted articles of incorporation for a ranch, drafted documents relating to the sale of farm land, reviewed potential malpractice claims against doctors and a hospital, drafted various powers of attorney and assisted with the assignments of legal claims to a trust. One witness at the attorney's Commission on Practice hearing valued the legal services provided to the client between \$2,500 and \$5,000. The attorney was paid directly by the client or through the client's trust "well in excess of \$200,000 for minimal legal work," according to the Commission's findings. The Commission found the attorney had violated Rule 1.5, MRPC, and other rules of professional conduct. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for this and other violations of the MRPC. *In re Goldstein*, MT 97-557 (2000). The Montana Supreme Court rejected the attorney's constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

Rule 1.5(b):

Failure to communicate scope of representation and contingency fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint, acknowledging he could not successfully defend himself against the facts and allegations in Counts One, Three and Four and admitting he violated Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. The attorney was retained to defend his client in a breach of contract lawsuit filed against her by her former realtor regarding a broker's fee dispute. The

agreement to defend her was made with her insurance carrier, which would pay his legal fees to defend her, and she would pay his fees for her counterclaim against the realtor. The attorney agreed to take 20% of any counterclaim recovery not to exceed \$8,000. His client paid an \$8,000 retainer, but the attorney failed to provide her with a written agreement for her signature setting forth the terms and scope of the representation and the contingent fee arrangement in violation of Rule 1.5, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. *In re Bruce M. Jacobs*, MT PR 20-0271 (2020).

Failure to communicate rate of fee in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the first matter, the attorney was hired by his clients, who were in a motor vehicle accident, to assist with settling their claims with the at-fault driver's insurance company. He agreed to represent them both on a contingency fee basis, but he failed to obtain one client's signature on the fee agreement provided in violation of Rule 1.5(b), MRPC, and the contingency fee rate was not made clear. He settled one client's claim for \$3,425 "new money," wrote himself a check for \$1,425 and paid the remaining \$2,000 to his client by cashier's check. He subsequently settled the other client's claim for \$5,000 "new money," and one month later, he paid his client \$2,765 by check. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than one year, and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failing to communicate scope of representation and rate of fees in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. The attorney failed to provide a written fee agreement or other writing memorializing the fee arrangement, including the scope of representation and basis or rate of the fee in violation of Rule 1.5(b), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than seven months and pay costs of the disciplinary proceedings for her

violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to communicate scope of representation and basis or rate of fees in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts as alleged in the Complaint and to violations of the MRPC. The attorney admitted she was retained and paid \$1,500 to represent her client regarding parenting disputes. She billed against the retainer on varying hourly rates for her and her staff. She admitted she verbally discussed representation with her client and provided her with her standard representation letter; however, she did not obtain her client's signature on the letter outlining the basis or rate of her fees and expenses in violation of Rule 1.5, MRPC. After a Rule 26 hearing, COP issued its Order on Rule 26 Conditional Admission, wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent*. For this and other misconduct, COP ordered the attorney be publicly admonished by COP in writing, be placed on probation for two years with conditions, and pay costs of the disciplinary proceedings for violating Rules 1.5, 1.15, and 1.18, MRPC. *In re Millicent Anne Leatzow*, MT PR 19-0625 (2020).

Failure to communicate scope of representation and basis or rate of fees in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of the MRPC. The attorney admitted he was retained and paid \$1,500 to represent his client concerning a potential civil rights violation and wrongful discharge claim. He admitted he failed to communicate in writing the scope of the representation and the basis or rate of his fees and expenses in violation of Rule 1.5(b), MRPC. For this and other misconduct, the attorney admitted violating Rules 1.3, 1.5(a), and 1.5(b), MRPC, in exchange for a public admonition and payment of costs of the disciplinary proceedings. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission, wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by COP, pay costs of the disciplinary proceedings, send his client a letter of apology, and be barred from attempting to collect any further fees or expenses from his client for violating Rules 1.3, 1.5(a), and 1.5(b), MRPC. *In re Douglas Marshall*, MT PR 18-0605 (2019).

Failure to communicate fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of the MRPC in relation to two separate matters. In one matter, the attorney admitted violating Rule 1.5(b) by failing to communicate his fee arrangement with his clients in writing. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order accepting the attorney's *Conditional Admission*. For this and other conduct, he admitted to violating Rules 1.2 and 1.5(b), MRPC, and was ordered to be publicly admonished by the COP, pay \$5,000 in restitution to his clients, and pay costs of the disciplinary proceedings. *In re Torger Oaas*, MT PR 16-0279 (2017).

Failure to communicate scope of representation and fee arrangement to client in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.5(b), 1.15(a), 1.18 and 1.18(e), MRPC, during his representations of a husband and wife in a related matter. He admitted he was retained to represent the wife during a federal criminal investigation and paid \$2,500 but failed to communicate the scope of representation and fee rate in writing in violation of Rule 1.5(b). After a Rule 26 hearing, the COP issued its Findings of Fact, Conclusions of Law and Order, concluding, for this and other misconduct, the attorney violated Rules 1.5(b), 1.15(a), 1.18 and 1.18(e), MRPC, and ordered him to receive a public admonition by COP and pay costs of the disciplinary proceedings. *In re Paul G. Matt*, MT PR 15-0654 (2016).

Failure to communicate scope of representation and fee arrangement to client in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.5(b) in one client matter by failing to communicate the scope of his representation and the basis or rate of his fee to his client in writing. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with conditions for violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to communicate scope of representation to client in writing. Attorney, practicing immigration law out-of-state, was retained to assist his client in renewing his employment authorization documents. He was paid \$700 to investigate whether the U.S. Government had an existing file concerning his client. One year later, the attorney was paid an additional \$1,250; however, the purpose of the representation was disputed, and no written agreement existed outlining the scope of the representation. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded for this and other misconduct, the attorney violated Rules 1.4, 1.5(a) and (b), 1.16(d), and 8.1(b), MRPC. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney be publicly admonished by the COP, complete an office practice management course, submit a written plan of management practice and policy changes, refund his former client \$1,250 with interest, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.5(a) and (b), 1.16(d), and 8.1(b), MRPC. *In re Eduardo L. Encinas*, MT PR 14-0250 (2015).

Failure to communicate the fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained by the personal representative of an estate to handle the probate of a contested will. The contesting party served the attorney with its first set of discovery requests, to which he failed to respond, despite his client's numerous letters reminding him to do so. A motion to compel was filed, to which the attorney also failed to respond. Thereafter, his client terminated his

representation, and the district court issued an order compelling her to respond to the discovery requests. The attorney admitted that, should this matter proceed to a contested hearing, he could not successfully defend himself against charges that: in violation of Rule 1.1, MRPC, he failed to competently represent his client; in violation of Rule 1.3, MRPC, he failed to act with reasonable diligence and promptness in representing his client; in violation of Rule 3.4(d), MRPC, he failed to make a reasonably diligent effort to comply with a legally proper discovery request(s) by an opposing party; in violation of Rule 1.4, MRPC, he did not promptly reply to his client's reasonable requests for information and/or failed to keep his client reasonably informed about the status of the matter; in violation of Rule 1.5(b), MRPC, he failed to communicate in writing the scope of his representation and the basis or rate of his fees and expenses for which his client would be responsible, before or within a reasonable time after commencing the representation. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re Stephen H. Dalby*, MT PR 12-0059 (2013).

Failure to obtain signed contingency fee agreement. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT PR-11-0617 (2012).

Unreasonable fee and failure to communicate the fee arrangement in writing. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of

Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to communicate rate of fees and scope of representation in writing. Attorney was retained by his client to handle an ancillary probate matter wherein the title to certain mineral rights needed to be transferred to the heirs of the estate. The attorney advised his client that the ancillary probate could be opened and closed in a matter of days. His client sent him \$1,500 and the necessary documents to commence the probate. The attorney never provided his client with a written fee agreement, or anything in writing, setting forth the scope of his representation and the basis or rate of his fee. He did not deposit the \$1,500 into a trust account. The attorney failed to respond to his client's letters and failed to return her calls. He failed to update her about the status of her matter, failed to comply with her requests for information, and failed to send her any probate documents. He failed to file any pleadings and failed to open an ancillary probate to effect transfer of the mineral rights. The attorney eventually refunded his client the \$1,500 after multiple requests from her and several promises to do so. He did not complete the work that he was hired to do. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence, failure to promptly reply to his client's requests for information and/or keep her informed about the status of the matter, failure to communicate the scope of representation and the basis or rate of the fee and expenses within a reasonable time after commencing the representation, failure to deposit the retainer into his trust account, and taking fees before they were earned. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.5(b), MRPC. The COP recommended the attorney receive a private admonition to be administered by the COP, be placed on probation for two years, and assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, be placed on probation for two years, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 10-0411 (2011).

Failure to present client/friend with a written fee agreement. Attorney represented a client who sought to sue the State of Montana. The attorney had a social relationship with the client, whom he considered a friend. The attorney did not enter into a formal written contingent fee agreement. The Commission on Practice found clear and convincing evidence that the attorney was representing a client pursuant to a contingency fee arrangement, but the attorney failed to put that agreement in writing and have it signed by the client. The Commission on Practice concluded this action violated Rule 1.5(b), MRPC. The Montana Supreme Court adopted the findings of the Commission and, finding multiple violations of the MRPC, suspended the attorney for three years. *In re Brett Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Rule 1.5(c):

Failure to promptly notify and deliver funds to client and health care providers; failure to provide clients an accounting. Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The checks were deposited into the attorney's trust account, but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Failure to communicate fee arrangement in writing. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT Supreme Court Case No. PR-11-0617 (2012).

Failure to present client/friend with a written contingency fee agreement. Attorney represented a client who sought to sue the State of Montana. The attorney had a social relationship with the client, whom he considered a friend. The attorney did not enter into a formal written contingent fee agreement. The Commission on Practice found clear and convincing evidence that the attorney was representing a client pursuant to a contingency fee arrangement, but the attorney failed to put that agreement in writing and have it signed by the client. The Commission on Practice concluded this action violated Rule 1.5(c), MRPC. The Montana Supreme Court adopted the findings of the Commission and, finding multiple violations of the MRPC, suspended the attorney for three years. *In re Brett Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Failure to abide by the terms of a written fee agreement. Attorney entered into a contingency fee agreement, which established that any costs advanced on behalf of the client would be repaid to the attorney out of any recovery. Despite those express terms, the attorney sent monthly statements to the client, requesting at least partial payments be made. The attorney also requested the client execute a promissory note for the amount of the costs, plus interest. Next, the attorney requested the client mortgage her home to secure the costs advanced and threatened to terminate the representation if the mortgage was not signed. Finally, the attorney engaged a collection agency to pursue his client. The Montana Supreme Court publicly censured the attorney for violating Rule 1.5(c), MRPC, and other rules of professional conduct. *In re Jerrold Nye*, MT 95-072 (1996).

Rules 1.5(d) and (e):

(No annotations available.)

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result, or has resulted, from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there

weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Disclosure of privileged information without documenting consent of client. Attorney was appointed to represent a felon, beginning with his sentencing hearing. Upon the attorney's initial meeting with the client, problems arose, and the attorney ceased her communications with him. At the sentencing hearing, the attorney represented she had spoken with her client and that he had requested to be sentenced to prison. The attorney further reported on various threats her client had made against, among others, the judge, the county attorney and his prior counsel. The client claims this release was not authorized. The attorney contends that the release was authorized, but admits she failed to document the authorization and, therefore, consented to discipline for violation of Rule 1.6, MRPC, and other rules of conduct. The Commission on Practice reviewed the attorney's tendered admission and recommended approval to the Montana Supreme Court. The Court approved the admission and suspended the attorney for 30 days. *In re Paulette Ferguson*, MT 03-114 (2004).

Filed a complaint against a current client, then consulted file for relevant information. Attorney agreed to represent a client in her bankruptcy. During that proceeding, the attorney agreed to represent another party in an action directly against his bankruptcy client. When the bankruptcy client complained and moved the court to disqualify the attorney, the lawyer refused to acknowledge a conflict of interest. A state district court judge warned the attorney, but he refused to withdraw until a formal complaint was filed with the Commission on Practice. The attorney admits that when the second client hired him, he consulted his bankruptcy client's file to determine if it contained any relevant information for his second client's case. The bankruptcy client testified that she believed information from her bankruptcy surfaced in the second proceeding. The Commission on Practice found the attorney violated Rule 1.6, MRPC. For this and other misconduct, the Montana Supreme Court suspended the attorney for 60 days. *In re Nye*, MT 95-521 (1996).

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Conflict of interest in representing multiple clients with adverse interests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The attorney filed the lawsuit, and the Oregon attorney submitted his *pro hac vice* application. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The attorney solely represented five claimants and jointly represented one claimant with the Oregon attorney; the seventh claimant was represented separately by another Montana attorney. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million. By that time, the plaintiffs' claims varied in amount and risk, and their interests became adverse, creating a conflict of interest for the attorney to represent all six clients in violation of Rule 1.7, MRPC. All plaintiffs agreed to the global settlement offer to be distributed on a *pro rata* basis. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and recommended the Court issue a public censure, impose a 90-day suspension, and order the attorney to pay costs of the disciplinary proceedings for this and other misconduct. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019).

Proposing fraudulent scheme to previous counsel on behalf of two clients with conflicting interests. Attorney represented a real estate developer and his two LLCs at various times, one of which was formed to act as general contractor for a construction project in Montana. The developer was the sole member of both LLCs. A dispute arose between LLC II, as general contractor, and a subcontractor, resulting in a lawsuit. The arbitration clause in the contract limited damages to actual damages. After arbitration, damages were awarded to both the general contractor and the subcontractor. The general contractor subsequently voluntarily dismissed itself as plaintiff in the lawsuit and became a defendant, making the two LLCs' interests adverse. An attorney representing the two LLCs in the lawsuit subsequently withdrew, and the LLC clients had a balance owing for attorney's fees. The attorney attempted to resolve the fee dispute, suggesting they scheme to acquire the funds by filing a legal malpractice claim with his malpractice insurer for the amount owed. The previous attorney declined and later filed suit to recover his fees. The attorney then applied and was admitted *pro hac vice* to defend the general contractor in the lawsuit. The general contractor admitted all allegations in the Complaint and failed to assert any affirmative defenses. The attorney then colluded with the developer to amend the contract to eliminate the arbitration clause and limitations on damages to benefit LLC I. Because arbitration had already occurred, the amendment was backdated to a time prior to arbitration. They further colluded to have the general contractor stipulate to judgment in favor of LLC I, and LLC I would not execute judgment if the general contractor signed a Confession of Judgment for \$12 million, which they would seek to collect from the insurers. After judgment was entered, the general contractor's insurer successfully sought to intervene and challenge the reasonableness of judgment. The district court agreed but awarded a \$2.4 million judgment against the general contractor in favor of LLC I. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding, among other things, the attorney violated Rules 1.7 and 3.3, MRPC, by proposing to the LLCs' previous attorney that he agree to a fraudulent malpractice insurance scheme to pay his legal fees and by failing to take remedial measures with the court when he learned of his developer client's fraudulent conduct. After the attorney and ODC filed objections and responded respectively, the Supreme Court accepted and adopted COP's Findings of Fact and Conclusions of Law but rejected its recommendation and, for this and other misconduct, disbarred the attorney for violating Rules 1.7, 3.1, 3.3, 8.4(c), and 8.4(d), MRPC, and ordered him to pay costs of the disciplinary proceedings. *In re Jon E. Cushman*, MT PR 17-0665 (2019).

Dual representation of clients with adverse interests creates concurrent conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting to certain facts as alleged in the Complaint. The attorney voluntarily resigned his law license during the pendency of the disciplinary proceedings. The attorney admitted he had an unwaivable conflict of interest in simultaneously representing the plaintiff and a defendant in a multi-party state court lawsuit when the clients had adverse interests. The attorney obtained a \$12 million judgment on behalf of his plaintiff client and against his defendant client, who admitted the allegations in exchange for release of all claims and asserted counter-claims against the remaining defendants. The attorney sponsored his co-counsel for the defendants on his application for *pro hac vice* admission; however, his co-counsel also assisted in orchestrating the plaintiff's claims against his defendant client. The defendant client's insurance company intervened and challenged the reasonableness of the judgment and moved to disqualify the attorney and revoke his co-counsel's

pro hac vice admission, which the district court granted. The attorney had withdrawn from representing the plaintiff three months earlier. The attorney admitted his dual representation of two adverse parties in the lawsuit constituted a concurrent conflict of interest in violation of Rule 1.7(a), MRPC. For this and other misconduct, the attorney admitted violating Rules 1.7(a) and 2.1, MRPC. He agreed to maintain his law license on Resigned status for a minimum of five years and pay costs of the disciplinary proceedings. After a Rule 26 hearing, COP submitted its Recommendation re: Rule 26 Conditional Admission and Affidavit of Consent to the Montana Supreme Court wherein it recommended the Court approve the attorney's *Conditional Admission and Affidavit of Consent* and enter an order imposing the agreed upon discipline. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney to maintain his law license on Resigned status for a minimum of five years and pay the costs of the disciplinary proceedings for violating Rules 1.7(a) and 2.1, MRPC. *In re George Best*, MT PR 17-0476 (2019).

Representation of attorney's mother and brother in her mother's guardianship posed significant risk to each client. Attorney was one of eight adult children when her father died with an estate valued in excess of \$40 million; her mother was the surviving spouse. The attorney filed a notice to appear on her mother's behalf in the probate for the limited purpose of preserving spousal rights. Her mother suffered from Alzheimer's, and one of the attorney's brothers and allies petitioned for temporary and permanent guardianship and conservatorship of their mother and filed an affidavit executed by their mother supporting the petition. Three of their siblings filed a petition for determination of incapacity and request for appointment of temporary guardians and conservators. The Court consolidated the petitions into one guardianship matter, in which the attorney appeared on her ally-brother's behalf. The Court found their mother incapacitated and appointed an attorney as guardian and two brothers and an attorney as joint conservators; the Court subsequently removed the attorney from representing her mother in the probate matter. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, making several findings. COP found the attorney's representation of her ally-brother in the consolidated conservatorship matter was directly adverse to her mother because there was a significant risk that her contemporaneous representation of her mother and brother would be materially limited by her responsibilities to each client. The interests of her mother and brother related to the probate of her father's estate were in actual or potential conflict. The attorney failed to obtain informed consent to the conflict in writing or orally; further, due to her mother's incapacity, consent could not have been obtained. COP concluded the attorney's representation of her brother in the guardianship was directly adverse to her representation of her mother in the probate and there was a significant risk that her simultaneous representation would be materially limited by her responsibilities to each client in violation of Rule 1.7, MRPC. For this and other misconduct and rule violations, COP recommended the attorney be disbarred and pay costs of the disciplinary proceedings. After the attorney filed objections, and ODC responded, the Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and disbarred the attorney and ordered her to pay costs of the disciplinary proceedings for her violations of Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Conflict of interest by suing current client on behalf of another client. Attorney and his firm represented a client in several matters simultaneously over a period of years, including a

dissolution, a contempt matter related to his divorce, and a lawsuit filed against him. The client received two parcels of land in the divorce settlement. After the divorce concluded and while the attorney was still representing the client in the lawsuit, he filed an attorney's lien for nearly \$24,000 for services rendered in the dissolution. The attorney had not yet withdrawn from representation in the dissolution matter. In the civil suit, default judgment was entered against the client, and the attorney withdrew from representation in that case; the client owed nearly \$2,300 to the attorney for legal services rendered in the civil suit. In the meantime, the attorney began representing the client in the contempt matter related to the dissolution. While the contempt matter was still pending, the attorney, representing the firm, filed a lawsuit against the client for services rendered in both the dissolution matter and the civil suit, alleging breach of contract, account stated, and foreclosure of the attorney's lien. The firm was granted default judgment against the client totaling over \$34,000 and received a writ of execution, later assigned to an LLC owned, in part, by the attorney, who signed the promissory note. At the time, multiple liens, including tax liens, encumbered the properties. At the sheriff's sale, the attorney successfully made a credit bid on behalf of the LLC in the amount of the default judgment. The only interests remaining at the time were the client's ex-wife's lien and tax liens, which the LLC paid. After a formal disciplinary hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding the attorney's conduct violated multiple rules, including Rule 1.7, MRPC, by representing two concurrent clients with conflicting interests when he represented the firm in the collection lawsuit against the client prior to withdrawing from representation in the dissolution. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations and ordered the attorney be publicly censured; recoup the value of the judgment from sale of the first lot and refund any excess to the client and quitclaim the second lot back to the client with copies of transfer paperwork to ODC; provide copies of attorney's liens the firm filed against any clients in the future to them; provide ODC with all documents related to any collection attempts made against clients for three years; and pay costs of the disciplinary proceedings for violating Rules 1.7, 1.8(a), and 1.8(b), MRPC. *In re David G. Tennant*, MT PR 16-0233 (2017), 2017 MT 66.

Conflict of interest representing adverse parties and having personal interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1 and 1.7, MRPC, in relation to her joint representation of three individuals in the creation of a trust in which she had a personal interest. Specifically, she admitted violating Rule 1.7 by jointly representing three individuals, who co-owned real property, one of whom was her daughter-in-law, and by failing to obtain written conflict waivers providing informed consent from the clients regarding the potential conflict. Her client with a 50% ownership in the property retained her to prepare a prenuptial agreement. Thereafter, the attorney prepared an irrevocable trust for the real property on behalf of her three clients, naming them equal 33.33% beneficiaries, but requiring her pre-nup client to pay all mortgage payments, taxes, insurance, and upkeep of the property. She was unaware at the time of the parties' Right of First Refusal. The attorney failed to advise her three clients of the potential tax implications. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order Imposing Discipline for the attorney's violations of Rules 1.1 and 1.7, MRPC, and ordered the attorney be publicly admonished by

COP in writing and pay reasonable costs of the disciplinary proceedings pursuant to the *Conditional Admission. In re Judith Peasley*, MT PR 15-0623 (2016).

Conflict of interest by making non-attorney advocate party to fee agreement. Attorney was hired by a widow on a contingency fee basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The widow hired a non-attorney "advocate" to assist her in the probate of her husband's estate in tribal court and to assist her in recovering damages. She also agreed to pay him a portion of the settlement proceeds. Both the widow and the advocate signed the contingency fee agreement between the attorney and the widow. After the case settled for \$300,000, the attorney paid the advocate approximately \$30,500 from the proceeds, after he had already paid him \$1,500 from the IOLTA trust account. By making the advocate a party to the Contingency Fee Agreement and by subsequently honoring his client's agreement with him, the attorney had a conflict of interest in violation of Rule 1.7, MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC, for this and other misconduct. COP recommended the attorney be disbarred from the practice of law, be ordered to disgorge his \$120,000 fee, reimburse all heirs of the estate for the misappropriated funds, turn over proceeds and records of all his trust accounts, and pay the costs of the disciplinary proceedings. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations, with the exception of disgorgement of fees and the amount of restitution, and disbarred the attorney, ordered him to pay restitution totaling \$65,547.10, and pay costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Representation of client limited by attorney's personal interests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.7, 1.15, and 2.1, MRPC. Specifically, he admitted he represented an injured party from a motor vehicle accident. The chiropractor who treated the injured party was the attorney's former client. The attorney believed the chiropractor still owed him money from his prior representation. After the chiropractor sent his bills to the insurer of the liable party for payment, the insurance company sent a check to the chiropractor made payable to him, the attorney and the injured party. The attorney advised the chiropractor he would endorse the check after he received payment for the balance due on his bill. With no response from the chiropractor, the attorney requested the insurance company re-issue the check payable only to him. Upon receipt, he deposited the check into his trust account. The attorney paid the chiropractor the money due to him after he filed his complaint. The attorney admitted that he failed to promptly deliver funds to his former client/third party which he was entitled to receive in violation of Rule 1.15; that there was a significant risk his representation of his new client would be materially limited by his personal interests in violation of Rule 1.7; and that he failed to exercise independent professional judgment and render candid advice in violation of Rule 2.1. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be publicly censured, pay restitution of interest on the funds he delayed paying to his former client, and pay the costs of the disciplinary proceedings. *In re Robert G. McCarthy*, MT PR 13-0492 (2014).

Conflict of interest of current and former clients. Attorney represented both a husband and wife during a federal investigation of methamphetamine distribution. The wife was a confidential witness in the investigation. The attorney represented her at an interview, during which she gave law enforcement incriminating information against her husband. Later the same evening, the attorney represented the husband at an interview by law enforcement. Law enforcement used the incriminating information provided by the wife in the interview. One year later, the wife was interviewed by law enforcement a second time during which she again gave information that incriminated her husband. The attorney represented her at that interview. When the interview concluded, the attorney advised law enforcement he was no longer representing the husband. He did not invoke the spousal immunity privilege during the interviews, nor did he obtain an informed consent waiver of actual or potential conflict of interest from either client. The following day, the attorney filed a petition for dissolution of marriage on the wife's behalf before he had terminated his representation of the husband. The husband was subsequently federally indicted on several charges of drug trafficking, firearms possession and stolen firearms possession. He pled guilty to one count of possession with intent to distribute and was sentenced to 20 years in federal prison with six years of supervised release. In his response to a disciplinary inquiry, the attorney denied having represented the wife in her dissolution proceeding. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court. The Court found the attorney violated Rules 1.7, 1.9, 8.1(a) and 8.4(c), MRPC, and ordered he be suspended from the practice of law for 90 days, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Solomon Neuhardt*, MT PR 13-0070 (2014).

Conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction. Attorney was hired to represent one of the co-personal representatives of an estate. The heirs were attempting

to sell the real property belonging to the estate. An initial market analysis of the estate property suggested the sale price be \$125,000, but the attorney's client refused to sign the listing agreement. The attorney wrote opposing counsel suggesting they hire an appraiser, and he would provide a copy of the appraisal to opposing counsel. The attorney received the written appraisal report, which estimated the property's market value at \$234,000. The attorney provided a copy to his client and offered to purchase the property for \$125,000, which he said would generate a net profit to her that was comparable to a \$200,000 sale because he would waive his fees. The client signed the written offer as co-PR but did not sign a consent and conflict waiver. The attorney delivered his \$125,000 purchase offer to opposing counsel for consideration and advised that he did have a conflict waiver from his client. The other co-PR rejected the offer, and the attorney increased it to \$140,000, which again was rejected. The attorney then informed opposing counsel of the \$234,000 appraisal and provided the market value analysis, which indicated the property value was in the \$249,000-\$263,000 range. The estate property was subsequently sold to a third party for \$192,000. The ODC filed a formal complaint alleging the attorney had a significant risk that his representation of his client, as co-PR, would be materially limited by his personal interests; he failed to exercise independent professional judgment and render candid advice; he failed to fully disclose the transaction and terms of the executory contracts and transmit them in writing to his client in a manner that could be reasonably understood by her; he failed to advise his client in writing of the desirability of seeking independent legal counsel regarding the transaction; he failed to obtain his client's informed consent, in writing, to the essential terms of the transaction and the lawyer's role in the transaction; and his failure to disclose the second appraisal to opposing counsel while making purchase offers was deceitful. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.7, 1.8(a), 2.1, and 8.4(c), MRPC. The COP recommended the attorney be publicly censured by the Court, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Brad L. Arndorfer*, PR 11-0649 (2012).

Conflict of interest. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice

of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction and the attorney's role in the transaction; improperly acquiring a propriety interest in property that was part of the subject matter of a client's bankruptcy case. Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a bankruptcy petition on his client's behalf. He was not familiar with the bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of

interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, reimburse his former client for the cost of hiring a new attorney to complete the bankruptcy, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed regarding three different matters. The formal complaint alleged violations of Rules 1.7, 1.11 and 8.4(d), MRPC, for the following. The attorney defended a client in a civil case filed by his landlord in Justice Court, which involved, among other things, back rent. The client was charged criminally with issuing bad checks to his landlord prior to the filing of the civil case; the attorney did not defend the client in the criminal matter. The attorney was sworn in as part-time County Attorney shortly after he began representing his client in the civil matter; he continued his representation after he became County Attorney. While representing the client in the civil case, the attorney on behalf of the State of Montana, filed a Motion to Dismiss the criminal charges against his current client. In a separate matter, prior to the time he became County Attorney, the attorney defended another client charged with DUI. The client signed a plea agreement and received a suspended sentence for Negligent Endangerment. A condition of his suspended sentence was to stay out of bars and to not drink alcohol. After the Montana Supreme Court issued an Opinion in another matter wherein it ruled that conditions of probation must correlate with the underlying offense, the client filed a *pro se* motion to remove the condition. As County Attorney and on behalf of the State, the attorney filed in his former client's case a Motion to Amend Plea Agreement referencing his former client and others, seeking to remove the condition from all plea agreements containing such a condition. The motion was denied. In the final matter, after he became the full-time County Attorney, the attorney continued to represent criminal defendants in another County. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Montana Supreme Court, which the Court adopted. The Court ordered the attorney to receive a public censure administered by the Court, to be placed on probation for a period of two years, commencing May 20, 2009, and to pay all costs of the disciplinary proceedings for violations of Rules 1.7, 1.11 and 8.4(d), MRPC. The conditions of probation include: 1) obey all laws and Montana Rules of Professional Conduct; 2) not seek re-election as County Attorney, and, 3) resign his position as County Attorney effective January 1, 2010. *In re Mark E. Jones*, MT PR 08-0216 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Attorney undertook dual representation of two clients whose interests were directly adverse.

Attorney's law firm agreed to represent client in a wrongful death action after her husband was killed in an explosion at a gas station (client 1). A few months after the representation began, the firm realized one of the firm's other clients (client 2) was potentially a responsible party. The attorney filed a complaint on behalf of client 1 against client 2 while continuing to represent client 2 in other matters. The Commission on Practice noted it is untenable for an attorney to contend that no conflict of interest exists where the attorney asserts on behalf of one client via

pleadings filed in court that another client negligently caused the death of the first client's spouse. The Commission on Practice further determined the attorney violated Rule 1.7, MRPC, when he did not obtain the informed consent of client 2 to the firm's representation of client 1. The attorney was publicly censured for his conduct. *In re Johnson*, 2004 MT 6, 319 Mont. 188, 84 P.3d 637.

Continued representation despite unreasonable conflict of interest. Attorney and his client were both named as defendants in a lawsuit stemming from an earlier dissolution case. The complaint alleged fraud upon the court. The attorney and his client executed a document entitled Consent of [client] for Representation and Acknowledgement of Conflict of Interest." (bracketed material added). The document recited the conflict of interest and the desire of the client to have the attorney represent him. The Commission on Practice found that the "obvious conflicts disclosed by the pleadings and acknowledged by both (the attorney and the client) ... were of such a nature and extent that no lawyer faced with such conflicts between himself and that of a client could, even with the client's apparent consent, agree to represent the client while representing himself as a co-defendant in the same lawsuit." The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for violating Rule 1.7, MRPC, and other misconduct unrelated to this violation. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney's petition for reinstatement.)

Filed a complaint against a current client. Attorney agreed to represent a client in her bankruptcy. During that proceeding, the attorney agreed to represent another party in an action directly against his bankruptcy client. When the bankruptcy client complained and moved the court to disqualify the attorney, the lawyer refused to acknowledge a conflict of interest. A state district court judge warned the attorney, but he refused to withdraw until a formal complaint was filed with the Commission on Practice. The attorney admits that when the second client hired him, he consulted his bankruptcy client's file to determine if it contained any relevant information for his second client's case. The bankruptcy client testified that she believed information from her bankruptcy surfaced in the second proceeding. The Commission on Practice found the attorney violated Rule 1.7, MRPC, when he filed a complaint naming as a defendant his bankruptcy client. For this and other misconduct, the Montana Supreme Court suspended the attorney for 60 days. *In re Nye*, MT 95-521 (1996).

Use of client and trust funds for personal purposes. Attorney mingled client funds with his own funds and pledged them as well as his law firm's pension funds for his personal obligations without the client's knowledge or consent. Further, attorney failed to remit the client funds upon request of the client and failed to remit the pension funds to his deceased law partner's spouse. The Commission on Practice determined this conduct violated Rule 1.7, MRPC, as well as other rules of professional conduct. In mitigation, five lawyers and judges, including a former Montana Supreme Court Justice, testified as to the attorney's reputation and character over a forty-year legal career. The Montana Supreme Court publicly censured the attorney for his conduct. *In re Berger*, MT 92-335 (1993).

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) in matters in which a lawyer wishes to assert a retaining lien against client property, papers or materials in the lawyer's possession to secure payment for the lawyer's services and costs advanced relating to such property, papers or materials, a written agreement for such a lien shall expressly set forth the limitations contained in paragraph (i)(3);

(3) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(4) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative, or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client;

(3) a lawyer may, for the sole purpose of providing basic living expenses, guarantee a loan from a regulated financial institution whose usual business involves making loans if such loan is reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without

regard to the outcome of the litigation and, further provided that neither the lawyer nor anyone on his/her behalf offers, promises or advertises such financial assistance before being retained by the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives written informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
- (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer:

- (1) may acquire and assert a charging lien only against causes of action or counterclaims in litigation pursuant to and only to the extent specified in MCA 37-61-420(2); such a charging lien does not extend to other client property, papers or materials in the lawyer's possession, to any matter not in litigation, or to any matter otherwise not covered by the specific language of MCA 37-61-420(2);
- (2) may contract with a client for a reasonable contingent fee in a civil case; and
- (3) may not acquire or assert a retaining lien to secure payment due for the lawyer's services against any client property, papers or materials other than those related to the matter for which payment has not been made and, upon termination of representation, shall deliver to the client any client property, papers or materials reasonably necessary to protect the client's interest in the matter to which the property, papers or materials relate as provided in Rule 1.16(d).

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

General Violations:

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Rule 1.8(a):

Failure to advise clients to seek outside counsel before entering into business transaction with attorney. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. In some cases, he executed promissory notes from him individually or as president of his construction company to current or former clients; in other cases, he executed security or mortgage instruments, which he did not file for recording. The notes called for monthly interest payments or were due in full 30 days after demand and were alleged to be secured by real property. The attorney did not advise the clients in writing or encourage them to seek independent legal counsel concerning the details of the transactions in violation of Rule 1.8(a), MRPC. After ODC filed its Complaint alleging violations of Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for

Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred and be ordered to pay full restitution totaling \$1,069,970.83 plus interest to those harmed and to pay costs of the disciplinary proceedings. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay restitution and costs of the disciplinary proceeding for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Conflict of interest by acquiring ownership interest in current client's property. Attorney and his firm represented a client in several matters simultaneously over a period of years, including a dissolution, a contempt matter related to his divorce, and a lawsuit filed against him. The client received two parcels of land in the divorce settlement. After the divorce concluded and while the attorney was still representing the client in the lawsuit, he filed an attorney's lien for nearly \$24,000 for services rendered in the dissolution. The attorney had not yet withdrawn from representation in the dissolution matter. In the civil suit, default judgment was entered against the client, and the attorney withdrew from representation in that case; the client owed nearly \$2,300 to the attorney for legal services rendered in the civil suit. In the meantime, the attorney began representing the client in the contempt matter related to the dissolution. While the contempt matter was still pending, the attorney, representing the firm, filed a lawsuit against the client for services rendered in both the dissolution matter and the civil suit, alleging breach of contract, account stated, and foreclosure of the attorney's lien. The firm was granted default judgment against the client totaling over \$34,000 and received a writ of execution, later assigned to an LLC owned, in part, by the attorney, who signed the promissory note. At the time, multiple liens, including tax liens, encumbered the properties. At the sheriff's sale, the attorney successfully made a credit bid on behalf of the LLC in the amount of the default judgment. The only interests remaining at the time were the client's ex-wife's lien and tax liens, which the LLC paid. After a formal disciplinary hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding the attorney's conduct constituted multiple rule violations, including Rule 1.8(a), MRPC, by acquiring an ownership interest in a current client's property after foreclosing on the firm's attorney lien and bid on property at sheriff's sale. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations and, for his violations of Rules 1.7, 1.8(a), and 1.8(b), MRPC, ordered the attorney be publicly censured; recoup the value of the judgment from sale of the first lot and refund any excess to the client and quitclaim the second lot back to the client with copies of transfer paperwork to ODC; provide copies of attorney's liens the firm filed against any clients in the future to them; provide ODC with all documents related to any collection attempts made against clients for three years; and pay costs of the disciplinary proceedings. *In re David G. Tennant*, MT PR 16-0233 (2017), 2017 MT 66.

Improperly advancing money to clients; acquiring proprietary interest in clients' lawsuit; failing to obtain clients' written, informed consent to business transactions; failing to advise clients about desirability of seeking independent counsel to the transactions. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC. Specifically, he admitted advancing \$1,000 to clients who retained him to represent them regarding their personal injury claims resulting from a motor vehicle accident. Shortly after he was hired, the clients retained new counsel, who filed a Complaint and Demand for Jury Trial on

the clients' behalf. Five days later, the attorney faxed a letter to the newly retained counsel, advising that the clients had re-hired him to represent them and their newborn baby regarding their personal injury claims. During that same month, the attorney advanced his clients \$3,150. At the attorney's suggestion, the clients also retained another law firm, with whom the attorney entered into a 30/70 fee sharing agreement. The attorney made advances to the clients totaling \$13,122.31. For nine advances totaling \$5,350, the client signed an Assignment of Judgment Proceeds, which gave the attorney a propriety interest in the case. He also charged the client administrative fees totaling \$1,000. He failed to advise his clients, in writing, of the desirability to seek independent counsel regarding the advances and failed to obtain their written, informed consent to the terms of the transactions and his role therein, including whether he represented the client in the transactions. Upon inquiry, the attorney falsely represented to ODC that he had never advanced money to other clients, former or current, except for litigation expenses. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for 10 years subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Gregory L. Ingraham*, MT PR 13-0293 (2014).

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction. Attorney was hired to represent one of the co-personal representatives of an estate. The heirs were attempting to sell the real property belonging to the estate. An initial market analysis of the estate property suggested the sale price be \$125,000, but the attorney's client refused to sign the listing agreement. The attorney wrote opposing counsel suggesting they hire an appraiser, and he would provide a copy of the appraisal to opposing counsel. The attorney received the written appraisal report, which estimated the property's market value at \$234,000. The attorney provided a copy to his client and offered to purchase the property for \$125,000, which he said would generate a net profit to her that was comparable to a \$200,000 sale because he would waive his fees. The client signed the written offer as co-PR but did not sign a consent and conflict waiver. The attorney delivered his \$125,000 purchase offer to opposing counsel for consideration and advised that he did have a conflict waiver from his client. The other co-PR rejected the offer, and the attorney increased it to \$140,000, which again was rejected. The attorney then informed opposing counsel of the \$234,000 appraisal and provided the market value analysis, which indicated the property value was in the \$249,000-\$263,000 range. The estate property was subsequently sold to a third party for \$192,000. The ODC filed a formal complaint alleging the attorney had a significant risk that his representation of his client, as co-PR, would be materially limited by his personal interests; he failed to exercise independent professional judgment and render candid advice; he failed to fully disclose the transaction and terms of the executory contracts and transmit them in writing to his client in a manner that could be reasonably understood by her; he failed to advise his client in writing of the desirability of seeking independent legal counsel regarding the transaction; he failed to obtain his client's informed consent, in writing, to the essential terms of the transaction and the lawyer's role in the transaction; and his failure to disclose the second appraisal to opposing counsel while making purchase offers was deceitful. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.7, 1.8(a), 2.1, and 8.4(c), MRPC. The COP recommended the attorney

be publicly censured by the Court, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Brad L. Arndorfer*, MT PR 11-0649 (2012).

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction and the attorney's role in the transaction; improperly acquiring a propriety interest in property that was part of the subject matter of a client's bankruptcy case. Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a bankruptcy petition on his client's behalf. He was not familiar with the bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of

interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, reimburse his former client for the cost of hiring a new attorney to complete the bankruptcy, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Failure to disclose relationships with client; failure to obtain client consent in writing; inappropriate use of information obtained through representation. The attorney had a long-standing business, religious and personal relationship with the client. The attorney represented the client in a variety of matters, including estates, civil and criminal claims, and an eviction matter. The attorney's father had started a business that sold Western-themed Christmas cards and gave the business to the attorney. The attorney verbally agreed to sell the Christmas card company to his client. The client then found a buyer and began negotiations to sell the company at a considerable profit to a third party. The third party demanded to be indemnified from any copyright claims by the attorney's father, the founder of the company. The attorney began representing both his father and the client. Eventually, the attorney scuttled the deal, withdrew his offer to sell the company to his client and sold it directly to the third party, keeping the proceeds for himself. The Commission on Practice determined the attorney's conduct violated Rule 1.8(a), MRPC, when he failed to provide fair and reasonable treatment for his client and full disclosure of the implications of the transactions involving the sale of the business. The Commission found a further violation of 1.8(a) when he failed to provide his client with a written explanation of the terms of the transaction and consent of his client thereto in writing. The Commission also found a violation of 1.8(b) when the attorney used information obtained through the representation of the client (the name of a willing buyer for the business) for personal gain and to the disadvantage of his client. The Montana Supreme Court publicly censured the attorney and suspended him from practice for 90 days. *In re Flaherty*, MT 03-147 (2004).

Attorney disciplined for engaging in unfair and unreasonable personal transactions with his client. Attorney represented an elderly woman in a variety of situations. As the client grew older, she began suffering from a variety of disorders, including mild dementia. During the course of this representation the attorney borrowed money from his client and engaged in other personal transactions with the client. In addition, he represented his client on several occasions without retainer agreements or other documents defining the scope of representation. The client deposited large amounts of money in the attorney's trust account and withdrawals from these

funds were not documented. A complaint was filed with the Commission on Practice who found that the attorneys' financial transactions with his client were advantageous to him, and considering his client's age and mental condition, he took unfair advantage of her in violation of Rule 1.8(a), MRPC. As far as the transaction where the client deposited money into the attorney's trust account was concerned, the attorney had a duty to have the funds available for her and to make disbursements upon her demand. Attorney violated this duty by investing the client's funds for his own purposes. The Commission recommended that the attorney be suspended from the practice of law for one year, but the Montana Supreme Court chose to publicly censure the Attorney instead. *In re Leckie*, MT 98-667 (2000).

Use of client and trust funds for personal purposes. Attorney mingled client funds with his own funds and pledged them as well as his law firm's pension funds for his personal obligations without the client's knowledge or consent. Further, attorney failed to remit the client funds upon request of the client, and failed to remit the pension funds to his deceased law partner's spouse. The Commission on Practice determined this conduct violated Rule 1.8(a), MRPC, as well as other rules of professional conduct. In mitigation, five lawyers and judges, including a former Montana Supreme Court Justice, testified as to the attorney's reputation and character over a forty-year legal career. The Montana Supreme Court publicly censured the attorney for his conduct. *In re Berger*, MT 92-335 (1993).

Rule 1.8(b):

Conflict of interest by failing to obtain current client's informed consent before acquiring ownership interest in client's property. Attorney and his firm represented a client in several matters simultaneously over a period of years, including a dissolution, a contempt matter related to his divorce, and a lawsuit filed against him. The client received two parcels of land in the divorce settlement. After the divorce concluded and while the attorney was still representing the client in the lawsuit, he filed an attorney's lien for nearly \$24,000 for services rendered in the dissolution. The attorney had not yet withdrawn from representation in the dissolution matter. In the civil suit, default judgment was entered against the client, and the attorney withdrew from representation in that case; the client owed nearly \$2,300 to the attorney for legal services rendered in the civil suit. In the meantime, the attorney began representing the client in the contempt matter related to the dissolution. While the contempt matter was still pending, the attorney, representing the firm, filed a lawsuit against the client for services rendered in both the dissolution matter and the civil suit, alleging breach of contract, account stated, and foreclosure of the attorney's lien. The firm was granted default judgment against the client totaling over \$34,000 and received a writ of execution, later assigned to an LLC owned, in part, by the attorney, who signed the promissory note. At the time, multiple liens, including tax liens, encumbered the properties. At the sheriff's sale, the attorney successfully made a credit bid on behalf of the LLC in the amount of the default judgment. The only interests remaining at the time were the client's ex-wife's lien and tax liens, which the LLC paid. After a formal disciplinary hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court wherein it concluded the attorney's conduct constituted multiple rule violations, including Rule 1.8(b), MRPC, by failing to obtain the current client's informed consent to foreclose on the firm's attorney lien and bid on property at sheriff's sale prior to withdrawing in the dissolution. After the parties filed objections, the

Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations and, for his violations of Rules 1.7, 1.8(a), and 1.8(b), MRPC, ordered the attorney be publicly censured; recoup the value of the judgment from sale of the first lot and refund any excess to the client and quitclaim the second lot back to the client with copies of transfer paperwork to ODC; provide copies of attorney's liens the firm filed against any clients in the future to them; provide ODC with all documents related to any collection attempts made against clients for three years; and pay costs of the disciplinary proceedings. *In re David G. Tennant*, MT PR 16-0233 (2017), 2017 MT 66.

Failure to disclose relationships with client; failure to obtain client consent in writing; inappropriate use of information obtained through representation. The attorney had a long-standing business, religious and personal relationship with the client. The attorney represented the client in a variety of matters, including estates, civil and criminal claims, and an eviction matter. The attorney's father had started a business that sold Western-themed Christmas cards and gave the business to the attorney. The attorney verbally agreed to sell the Christmas card company to his client. The client then found a buyer and began negotiations to sell the company at a considerable profit to a third party. The third party demanded to be indemnified from any copyright claims by the attorney's father, the founder of the company. The attorney began representing both his father and the client. Eventually, the attorney scuttled the deal, withdrew his offer to sell the company to his client and sold it directly to the third party, keeping the proceeds for himself. The Commission on Practice determined the attorney's conduct violated Rule 1.8(a), MRPC, when he failed to provide fair and reasonable treatment for his client and full disclosure of the implications of the transactions involving the sale of the business. The Commission found a further violation of 1.8(a) when he failed to provide his client with a written explanation of the terms of the transaction and consent of his client thereto in writing. The Commission also found a violation of 1.8(b) when the attorney used information obtained through the representation of the client (the name of a willing buyer for the business) for personal gain and to the disadvantage of his client. The Montana Supreme Court publicly censured the attorney and suspended him from practice for 90 days. *In re Flaherty*, MT 03-147 (2004).

Rule 1.8(c):

Reciprocal discipline for violations in Massachusetts. Attorney was disciplined by the Commonwealth of Massachusetts Board of Bar Overseers of the Supreme Judicial Court for violations of Rule 1.8(c) of the Massachusetts Rules of Professional Conduct. Copies of the relevant documents were provided to ODC. The attorney was publicly reprimanded in Massachusetts. Subsequently, the Montana Supreme Court approved COP's recommendation for reciprocal discipline and publicly censured the attorney for violating Rule 1.8(c), MRPC for preparing a will for a person who was not a relative that benefited the Respondent and his mother. *In re Proctor*, MT PR 07-0422 (2008).

Attorney prepared instrument giving attorney substantial gift upon death of client. Working on behalf of an elderly client, the attorney drafted a will appointing attorney as the client's personal representative, disinheriting client's only son and devised 50-percent of client's estate to the attorney. One of the attorney's employees and a personal friend of the attorney witnessed

the will. The attorney notarized the signing of the will. The Commission on Practice found these actions violated Rule 1.8(c), MRPC, which “prohibits a lawyer from preparing an instrument giving the lawyer or person related to the lawyer any substantial gift from a client, including a testamentary gift.” The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for this and other violations of the MRPC. *In re Goldstein*, MT 97-557 (2000). The Montana Supreme Court rejected the attorney’s constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

Rule 1.8(d):

(No annotations available.)

Rule 1.8(e):

Improperly advancing money to clients; acquiring proprietary interest in clients’ lawsuit; failing to obtain clients’ written, informed consent to business transactions; failing to advise clients about desirability of seeking independent counsel to the transactions; knowingly making false representations in a disciplinary matter; engaging in conduct involving deceit and misrepresentations. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC. Specifically, he admitted advancing \$1,000 to clients who retained him to represent them regarding their personal injury claims resulting from a motor vehicle accident. Shortly after he was hired, the clients retained new counsel, who filed a Complaint and Demand for Jury Trial on the clients’ behalf. Five days later, the attorney faxed a letter to the newly retained counsel, advising that the clients had re-hired him to represent them and their newborn baby regarding their personal injury claims. During that same month, the attorney advanced his clients \$3,150. At the attorney’s suggestion, the clients also retained another law firm, with whom the attorney entered into a 30/70 fee sharing agreement. The attorney made advances to the clients totaling \$13,122.31. For nine advances totaling \$5,350, the client signed an Assignment of Judgment Proceeds, which gave the attorney a propriety interest in the case. He also charged the client administrative fees totaling \$1,000. He failed to advise his clients, in writing, of the desirability to seek independent counsel regarding the advances and failed to obtain their written, informed consent to the terms of the transactions and his role therein, including whether he represented the client in the transactions. Upon inquiry, the attorney falsely represented to ODC that he had never advanced money to other clients, former or current, except for litigation expenses. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for 10 years subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Gregory L. Ingraham*, MT PR 13-0293 (2014).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal

complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Rule 1.8(f):

Accepting compensation for retainer fee from another without client's written consent. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.8(f) in one client matter by accepting payment for his retainer fee from someone other than his client without his client's written consent. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b),

1.8(f), 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with certain conditions. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal

cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Rule 1.8(g)

Failure to obtain clients' written waivers consenting to conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. The

attorney filed the lawsuit, and the Oregon attorney submitted his *pro hac vice* application. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The attorney solely represented five claimants and jointly represented one claimant with the Oregon attorney; the seventh claimant was represented separately by another Montana attorney. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million. By that time, the plaintiffs' claims varied in amount and risk, and their interests became adverse, creating a conflict of interest. No client signed written waivers of consent to the attorney's conflict of interest in representing all six plaintiffs simultaneously when her representations were materially limited by her responsibility to each client in violation of Rule 1.8(g), MRPC. All plaintiffs agreed to the global settlement offer to be distributed on a *pro rata* basis. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and recommended the Court issue a public censure, impose a 90-day suspension, and order the attorney to pay costs of the disciplinary proceedings for this and other misconduct. The Supreme Court accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her license to practice law for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019).

Rule 1.8(h):

(No annotations available.)

Rule 1.8(i):

Improperly advancing money to clients; acquiring proprietary interest in clients' lawsuit; failing to obtain clients' written, informed consent to business transactions; failing to advise clients about desirability of seeking independent counsel to the transactions; knowingly making false representations in a disciplinary matter; engaging in conduct involving deceit and misrepresentations. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC. Specifically, he admitted advancing \$1,000 to clients who retained him to represent them regarding their personal injury claims resulting from a motor vehicle accident. Shortly after he was hired, the clients retained new counsel, who filed a Complaint and Demand for Jury Trial on the clients' behalf. Five days later, the attorney faxed a letter to the newly retained counsel, advising that the clients had re-hired him to represent them and their newborn baby regarding their personal injury claims. During that same month, the attorney advanced his clients \$3,150. At the attorney's suggestion, the clients also retained another law firm, with whom the attorney entered into a 30/70 fee sharing agreement. The attorney made advances to the clients totaling \$13,122.31. For nine advances totaling \$5,350, the client signed an Assignment of Judgment Proceeds, which gave the attorney a proprietary interest in the case. He also charged the client administrative fees totaling \$1,000. He failed to advise his clients, in writing, of the desirability to seek independent counsel regarding the advances and failed to obtain their written, informed consent to the terms of the transactions and his role therein, including whether he represented the client in the transactions. Upon inquiry,

the attorney falsely represented to ODC that he had never advanced money to other clients, former or current, except for litigation expenses. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for 10 years subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Gregory L. Ingraham*, MT PR 13-0293 (2014).

Failure to provide competent representation; engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction and the attorney's role in the transaction; improperly acquiring a propriety interest in property that was part of the subject matter of a client's bankruptcy case; false statements to a tribunal; disobeying obligations under the rules of a tribunal. Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a bankruptcy petition on his client's behalf. He was not familiar with the bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was

eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, reimburse his former client for the cost of hiring a new attorney to complete the bankruptcy, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Rule 1.8(j):

Sex with client. The allegations in the Formal Complaint included the following. Attorney was retained to defend his client against criminal charges of Felony Criminal Possession of Dangerous Drugs, Misdemeanor Criminal Possession of Dangerous Drugs, Misdemeanor Criminal Possession of Drug Paraphernalia, and Felony Criminal Endangerment. The attorney and his client engaged in sexual relations after the attorney-client relationship commenced. No consensual sexual relationship existed between the attorney and client prior to that time. According to the Montana Supreme Court's Order, the attorney conceded in his tendered admission that the material facts as alleged in the complaint and further acknowledged that proof of such allegations would provide grounds for discipline. By his *Conditional Admission and Affidavit of Consent*, the attorney admitted to the allegations of the complaint and admitted to violating Rule 1.8(j), MRPC. The COP recommended to the Court that the tendered admission be approved. The Court accepted the attorney's tendered admission and ordered the attorney be suspended from the practice of law for a period of four months. The Court further ordered the attorney pay the costs of the proceedings. *In re Neuhardt*, MT PR 07-0233 (2007).

Rule 1.8(k):

(No annotations available.)

RULE 1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Acquiring property through lien foreclosure on former clients' property conflict of interest.

Attorney was hired to pursue an eviction and real property possession civil litigation matter regarding his clients' property in Hungry Horse, Montana, and received favorable judgments in both cases relating to the eviction. His firm began sending his clients regular invoices, which they did not pay. The attorney filed an attorney lien against the clients' property on the firm's behalf with the County Clerk and Recorder in the amount of \$4,615.33 for unpaid fees, interest, and collection fees. He did not give actual notice of the lien filing to his former clients. Over three years later, the attorney sued his former clients on the firm's behalf, alleging breach of contract, account stated, and foreclosure of attorney lien. The firm was granted an \$8,148.68 default judgment, which the attorney assigned to his LLC, obtained a writ of execution, and successfully submitted an \$8,450.03 credit bid at the sheriff's sale. The former clients were notified of and did not attend the sheriff's sale or contest executing on their property to satisfy their debts. They subsequently redeemed the property by paying the total of their debt with accrued interest (\$9,141.39) to the LLC. In its Complaint, ODC alleged the attorney violated Rule 1.9, MRPC, when he bid on his former clients' property because his knowledge of the property derived from his representation. After a formal hearing regarding this and another disciplinary matter, MT PR 16-0233, COP concluded the attorney did not violate Rule 1.9 in this matter because he could have learned his former clients' owned the property through public records. After ODC and the attorney filed objections regarding both matters, the Supreme Court disagreed, specifically stating he undisputedly learned of the property as part of his representation and used that information to his former clients' disadvantage in violation of Rule 1.9, MRPC. The Court further opined the violation ultimately did not harm the clients because they redeemed their property and the discipline recommended by COP was sufficient for his rule

violations in both matters – specifically, public censure by the Court, provide copies of attorney’s liens the firm filed against any clients in the future to them, provide ODC with all documents related to any collection attempts made against clients for three years, and pay costs of the disciplinary proceedings. *In re David G. Tennant*, MT PR 16-0435, 2017 MT 66.

Conflict of interest of current and former clients; false statements to disciplinary authority; dishonesty, fraud, deceit and misrepresentations. Attorney represented both a husband and wife during a federal investigation of methamphetamine distribution. The wife was a confidential witness in the investigation. The attorney represented her at an interview, during which she gave law enforcement incriminating information against her husband. Later the same evening, the attorney represented the husband at an interview by law enforcement. Law enforcement used the incriminating information provided by the wife in the interview. One year later, the wife was interviewed by law enforcement a second time during which she again gave information that incriminated her husband. The attorney represented her at that interview. When the interview concluded, the attorney advised law enforcement he was no longer representing the husband. He did not invoke the spousal immunity privilege during the interviews, nor did he obtain an informed consent waiver of actual or potential conflict of interest from either client. The following day, the attorney filed a petition for dissolution of marriage on the wife’s behalf before he had terminated his representation of the husband. The husband was subsequently federally indicted on several charges of drug trafficking, firearms possession and stolen firearms possession. He pled guilty to one count of possession with intent to distribute and was sentenced to 20 years in federal prison with six years of supervised release. In his response to a disciplinary inquiry, the attorney denied having represented the wife in her dissolution proceeding. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court. The Court found the attorney violated Rules 1.7, 1.9, 8.1(a) and 8.4(c), MRPC, and ordered he be suspended from the practice of law for 90 days, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Solomon Neuhardt*, MT PR 13-0070 (2014).

Filed a complaint against a client. Attorney agreed to represent a client in her bankruptcy. During that proceeding, the attorney agreed to represent another party in an action directly against his bankruptcy client. When the bankruptcy client complained and moved the court to disqualify the attorney, the lawyer refused to acknowledge a conflict of interest. A state district court judge warned the attorney, but he refused to withdraw until a formal complaint was filed with the Commission on Practice. The attorney admits that when the second client hired him, he consulted his bankruptcy client’s file to determine if it contained any relevant information for his second client’s case. The bankruptcy client testified that she believed information from her bankruptcy surfaced in the second proceeding. The Commission on Practice found the attorney violated Rule 1.9, MRPC, when he filed a complaint naming as a defendant his bankruptcy client. For this and other misconduct, the Montana Supreme Court suspended the attorney for 60 days. *In re Nye*, MT 95-521 (1996).

Simultaneous representation of two parties in an adversarial matter. Attorney appeared in 1987 on behalf of a party in a domestic relations proceeding. After his initial appearance in that matter, he took no further action, but remained listed as the counsel of record. In 1991, the attorney agreed to represent another client in the same matter. The attorney claimed to have no

recollection of representing the first client. After the conflict was discovered, the attorney still appeared at a hearing on behalf of his second client. The Commission on Practice found a violation of Rule 1.9, MRPC, because “he represented a person in the same matter in which he had previously represented another party.” The Montana Supreme Court adopted the findings of the Commission and suspended the attorney for not less than one year for this and other violations of the rules of conduct. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney’s petition for reinstatement.)

RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9 unless:

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and:

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Imputation of conflict of interest; failure to withdraw upon discovering imputed conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed and specifically admitted the following. The attorney represented a client who was in negotiations for the purchase of real property from an Estate. Another attorney in the firm represented the seller and Special Administrator of the Estate. The attorney performed work related to his client's proposed purchase of the property after the parties entered into a Buy-Sell Agreement and while new negotiations commenced. The other attorney drafted a contract for deed to conclude the sale between the parties, changes were proposed, a meeting took place and emails were exchanged between the two attorneys of the same firm. The seller, as Special Administrator of the Estate, retained new counsel, who advised the attorney's client the deal was off, and the property was later sold to another purchaser. The attorney's client hired other counsel to file a lawsuit against the Estate and others, asserting breach of contract and fraud claims. The attorney provided and prepared documents to assist new counsel and reviewed the draft complaint before the lawsuit was filed. Two months later, new counsel for the seller and Special Administrator of the Estate filed a Substitution of Counsel in the probate matter to replace the other attorney. The attorney admittedly violated Rule 1.10 for representing the potential buyer when another attorney in the firm represented the seller and Special Administrator of the Estate and violated Rule 1.16 for accepting representation of the potential buyer in relation to the prospective real estate transaction. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's Conditional Admission and Affidavit of Consent and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Ryan D. Purdy*, MT PR 13-0505 (2014).

Imputation of conflict of interest; failure to withdraw upon discovering imputed conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed and specifically admitted the following. She was hired to assist her client with the probate of her father's estate. He died intestate and owned two parcels of land in Flathead County. After her client was appointment special administrator of the estate, they discussed the estate's financial problems and the need to sell its assets. Her client, on behalf of the estate and without the attorney's assistance, began negotiating the sale of one parcel of land to a potential buyer, who was a current client of the law firm where the attorney worked. The two clients entered into a Buy-Sell Agreement. The potential buyer's attorney, a partner in the law firm, performed work related to his client's proposed purchase of the property. Negotiations of the initial terms of the Buy-Sell Agreement failed, and new negotiations commenced for the sale and purchase of both parcels of land. After the new terms were negotiated, the attorney, representing the Special Administrator of the Estate, drafted a proposed contract for deed to conclude the sale. The potential buyer's attorney of the same law firm proposed changes to the contract, and a meeting was held and a series of emails were exchanged between the two attorneys regarding the sale. The seller, as Special Administrator of the Estate, retained new counsel, who advised the potential buyer the deal was off, and the property was later sold to another purchaser. The firm's client hired other counsel to file a lawsuit against the Estate and others, asserting breach of contract and fraud claims. The partner in the firm provided and prepared documents to assist new counsel and reviewed the draft complaint before the lawsuit was filed. Two months later, a Substitution of Counsel was filed in the probate matter, replacing

the attorney with new counsel for the Special Administrator. The attorney admittedly violated Rule 1.10 for representing the Special Administrator of the Estate when another attorney in the firm represented the potential buyer to the Estate's property and violated Rule 1.16 for failing to withdraw as counsel for the Special Administrator of the Estate. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's Conditional Admission and Affidavit of Consent and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Lori B. Miller*, MT PR 13-0506 (2014).

Law firm represented two clients whose interests were directly adverse. Disciplined attorneys were partners in a law firm that agreed to represent a client in a wrongful death action involving her husband. After a few months of representation, the firm realized an existing client of the firm was a potentially responsible party and failed to take appropriate steps. The Montana Supreme Court determined the partners in the law firm failed to make appropriate inquiries about the nature of consent allegedly obtained from the clients with adverse interests. The Court adopts the notion that the duty of loyalty embodied in Rule 1.7, MRPC, applies to all lawyers practicing within a law firm: "Hence, each lawyer is vicariously bound by the obligation of loyalty owed by all lawyers with whom that lawyer is associated." The Court also cited favorably to comment 6 to rule 1.10 of the ABA Model Rules of Professional Conduct Rule. *In re Wenz*, MT 02-146 (2004); *In re Marra*, MT 02-147 (2004); See also, *In re Johnson*, 2004 MT 6, 319 Mont. 188, 84 P.3d 637.

RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

- (1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
- (2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed regarding three different matters. The formal complaint alleged violations of Rules 1.7, 1.11 and 8.4(d), MRPC, for the following. The attorney defended a client in a civil case filed by his landlord in Justice Court, which involved, among other things, back rent. The client was charged criminally with issuing bad checks to his landlord prior to the filing of the civil case; the attorney did not defend the client in the criminal matter. The attorney was sworn in as part-time County Attorney shortly after he began representing his client in the civil matter; he continued his representation after he became County Attorney. While representing the client in the civil case, the attorney on behalf of the State of Montana, filed a Motion to Dismiss the criminal charges against his current client. In a separate matter, prior to the time he became County Attorney, the attorney defended another client charged with DUI. The client signed a plea agreement and received a suspended sentence for Negligent Endangerment. A condition of his suspended sentence was to stay out of bars and to not drink alcohol. After the Montana Supreme Court issued an Opinion in another matter wherein it ruled that conditions of probation must correlate with the underlying offense, the client filed a *pro se* motion to remove the condition. As County Attorney and on behalf of the State, the attorney filed in his former client's case a Motion to Amend Plea Agreement referencing his former client and others, seeking to remove the condition from all plea agreements containing such a condition. The motion was denied. In the final matter, after he became the full-time County Attorney, the attorney continued to represent criminal defendants in another County. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Montana Supreme Court, which the Court adopted. The Court ordered the attorney to receive a public censure administered by the Court, to be placed on probation for a period of two years, commencing May 20, 2009, and to pay all costs of the disciplinary proceedings for violations of Rules 1.7, 1.11 and 8.4(d), MRPC. The conditions of probation include: 1) obey all laws and Montana Rules of Professional Conduct; 2) not seek re-election as County Attorney, and, 3) resign his position as County Attorney effective January 1, 2010. *In re Mark E. Jones*, MT PR 08-0216 (2009).

RULE 1.12: FORMER JUDGE, ARBITRATOR, SETTLEMENT MASTER, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, settlement master, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, settlement master, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

(No annotations are available relating to violations of Rule 1.12, MRPC.)

RULE 1.13: ORGANIZATION AS CLIENT

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.
- (c) Except as provided in paragraph (d), if:
- (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law; and
 - (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.
- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law.
- (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.
- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(No annotations are available relating to violations of Rule 1.13, MRPC.)

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Failure to maintain a normal client-lawyer relationship with an elderly client with medical problems. In the course of representing an elderly client with medical problems, the attorney was paid directly by the client or through the client's trust "well in excess of \$200,000 for minimal legal work," according to the findings of the Commission on Practice. During the "representation," the attorney prepared documents that disinherited the client's son and devised 50-percent of the client's estate to the attorney. The attorney also prepared and helped the client execute a power of attorney that contained "very unusual provisions," according to the Commission. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for violating Rule 1.14, MRPC, and other violations of the MRPC. *In re Goldstein*, MT 97-557 (2000). The Montana Supreme Court rejected the attorney's constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Unclaimed or unidentifiable Trust Account Funds.

(1) When a lawyer, law firm, or estate of a deceased lawyer cannot, using reasonable efforts, identify or locate the owner of funds in its Montana IOLTA or non-IOLTA trust account for a period of at least two (2) years, it may pay the funds to the Montana Justice Foundation (MJF). At the time such funds are remitted, the lawyer may submit to MJF the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known; a description of the efforts undertaken to identify or locate the owner; and the amount of any unclaimed or unidentified funds.

(2) If, within two (2) years of making a payment of unclaimed or unidentified funds to MJF, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, MJF shall refund the funds it received to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to MJF a verification attesting that the funds have been returned to the owner. MJF shall maintain sufficient reserves to pay all claims for such funds.

Failure to safekeep client property; misappropriating client funds; failure to maintain or keep records of client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the first matter, the attorney was hired to assist his clients with settling their insurance claims after a motor vehicle accident. He settled one client's claim for \$3,425 "new money," deposited the check into his IOLTA trust account, wrote himself a check for \$1,425, and paid the remaining \$2,000 to his client by cashier's check because he did not have sufficient funds in his trust account in violation of Rules 1.15 and 1.18. He subsequently settled the other client's claim for \$5,000 "new money," deposited the check into his IOLTA trust account, transferred it to his personal bank account, immediately withdrew it all on the same day in violation of Rules 1.15 and 1.18, MRPC. One month later, he paid his client \$2,765 by check from his personal bank account in violation of Rules 1.15 and 1.18, MRPC. The attorney received \$124.95 from the insurance company as medical expense reimbursement for his client, which he deposited into his IOLTA, transferred to his personal bank account, and withdrew the funds in violation of Rules 1.15 and 1.18, MRPC. He failed to keep and maintain a record of the settlement distribution or client ledger for either client's settlement funds in violation of Rules 1.15 and 1.18, MRPC. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights issue but failed to complete any legal services. After his client requested a retainer refund, the attorney advised ODC he intended to refund \$1,500 of the retainer but failed to do so. The attorney did not safekeep and maintain his client's retainer in his IOLTA trust account, did not keep his client's funds separate from his own funds, and used his client's funds for his own purposes before they were earned Rules 1.15 and 1.18, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than one year, and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to safekeep clients' retainers until earned. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. She did not deposit the retainer into her IOLTA trust account in violation of Rules 1.15 and 1.18, MRPC, and failed to complete the work she was hired and paid to do. In relation to the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The clients made an initial \$100 payment for filing

fees and later paid the attorney \$2,500 by credit card for her retainer. She did not deposit any of the funds into her IOLTA trust account in violation of Rules 1.15 and 1.18, MRPC, and failed to complete the work she was hired to do. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court wherein it recommended the Court accept the *Conditional Admission and Affidavit of Consent* and impose the agreed upon discipline. The Court accepted and adopted COP's Recommendation and, for this and other misconduct, ordered the attorney be indefinitely suspended for not less than seven months and pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to refund client retainer and account for funds; failure to safekeep unearned client retainer. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting the facts alleged in the Complaint and that she violated Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. The attorney admitted she violated Rule 1.15, MRPC, by failing to refund the unearned retainer to her client, failing to provide an accounting of the funds, and disbursing her client's funds to herself before they were earned. After a Rule 26 hearing, COP issued its Order on Rule 26 Proceeding, wherein it accepted the attorney's *Conditional Admission* and approved the agreed upon discipline. For this and other misconduct, COP ordered the attorney be publicly admonished by COP, pay \$800 in restitution to her former client, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. *In re Suzanne Marshall*, MT PR 20-0038 (2020).

Co-mingling personal and firm funds with client funds; failure to safekeep client property; taking fees before earned; misappropriating client and third-party funds for personal or business use. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts of the Complaint and multiple violations of the MRPC as outlined. The attorney overdrew her IOLTA trust account when her client tried negotiating her \$521 retainer refund check then co-mingled her operating account funds with her IOLTA trust account funds in violation of Rules 1.15 and 1.18, MRPC. She failed to hold sufficient funds in her IOLTA trust account and misappropriated funds belonging to her client using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She misappropriated \$34,200 from her IOLTA trust account over a two-year period by withdrawing clients' funds prior to earning them and using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. The attorney co-mingled approximately \$31,000 of her personal or business funds by depositing them into her IOLTA trust account to replace misappropriated client funds in violation of Rules 1.15 and 1.18, MRPC. She began depositing all client retainers into the firm's business account before the funds were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. The attorney failed to hold third-party funds separate from her own and used them for her own purposes in violation of Rule 1.15, MRPC. After another client authorized her to charge her credit card monthly to apply toward her bill, the attorney charged her card multiple times exceeding the agreed upon payment plan by \$6,800, without her client's authorization. The funds were deposited into the firm's IOLTA, and she used for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c),

MRPC. The attorney was paid a \$3,500 retainer by a third client's mother-in-law via Square, which she deposited into her IOLTA trust account. Her client then authorized her to charge her credit card monthly to apply toward her bill, but the attorney charged some months in excess of the agreed upon payment plan without authorization. The funds were deposited into her IOLTA, and the attorney used them for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She deposited funds via transfer from the payment processor into her firm's business account rather than her firm's IOLTA trust account when the funds did not belong to her in violation of Rule 1.15, MRPC. She could only reverse \$2,001 in charges because she did not have sufficient funds in either her business or trust account to reverse or repay the remainder. She used the funds for her own purposes in violation of Rules 1.15 and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court, which the Court accepted and adopted. The Court disbarred the attorney, ordered her to pay \$11,284 in restitution to one third party with 10% interest and \$54,218 to another third party with interest at the rate charged by her credit card company, and to pay costs of the disciplinary proceeding for violating Rules 1.15, 1.18, and 8.4(c), MRPC. *In re Tara Rose-Miller*, MT PR 19-0634 (2020).

Failure to properly maintain IOLTA trust account records. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts as alleged in the Complaint and to violations of the MRPC. The attorney admitted she was retained and paid \$1,500 to represent her client regarding parenting disputes. The attorney admitted she failed to keep appropriate IOLTA trust account records of client funds in accordance with the Trust Account Maintenance and Audit Requirements in violation of Rules 1.15 and 1.18, MRPC. After a Rule 26 hearing, COP issued its Order on Rule 26 Conditional Admission, accepting the attorney's *Conditional Admission and Affidavit of Consent*. For this and other misconduct, the attorney was publicly admonished by COP in writing, placed on probation for two years with conditions, and ordered to pay costs of the disciplinary proceedings for violating Rules 1.5, 1.15, and 1.18, MRPC. *In re Millicent Anne Leatzow*, MT PR 19-0625 (2020).

Failure to safekeep client property; using client funds for personal and business expenses or to pay other investors; failure to pay clients funds owed upon request. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. He executed promissory notes from himself or his construction company to some current or former clients. The attorney deposited \$1.2 million of the funds into various personal or business accounts he owned; at least \$125,000 was deposited into his firm's IOLTA trust account. He used the funds to pay himself, family members, personal or business obligations, or to pay other clients and individuals their interest payments, most of which came from his IOLTA trust account, in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. He deposited personal funds in his IOLTA to cover payments in violation of Rule 1.15, MRPC. After repaying some notes, he still owed \$1,069,970.83 to clients and others. He did not keep a ledger of his client's funds or maintain the property separate from his own in violation of Rules 1.15 and 1.18, MRPC. After ODC filed its Complaint alleging

violations of Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Supreme Court, which the Court accepted and adopted and disbarred the attorney, ordered him to pay full restitution totaling \$1,069,970.83 plus interest and to pay costs of the disciplinary proceedings for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Failure to provide accounting or disburse Trust funds to Trust beneficiaries. Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. The beneficiary who was of majority age made several unsuccessful attempts to contact the attorney for years. When he responded, he promised to pay her tuition and books but failed to do so. He failed to keep or provide an accounting of the funds or deliver the Trust funds, as requested. After ODC filed its Complaint, for this and other misconduct, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. The attorney's failure to comply with the beneficiary's requests for an accounting or for delivery of the Trust funds violated Rule 1.15(b), MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Supreme Court, which the Court accepted and adopted and disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Failure to promptly notify client of receipt of seized funds; failure to keep client funds separate. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted he was retained to represent a client in a criminal felony drug case and a related civil forfeiture matter concerning \$10,318 in cash seized at the time of his arrest. The attorney successfully argued both cases be dismissed and retrieved his client's seized funds while his client remained incarcerated for probation violations. The attorney admitted he deposited the funds into his IOLTA trust account but failed to remit the funds to his client until after his client submitted a complaint to ODC seven months later in violation of Rule 1.15(b), MRPC. During the time he held his client's funds, the attorney's trust account balance dropped below the \$10,318 that should have remained in the account until he returned the funds to his client because he issued checks prior to his deposits being cleared. The attorney admitted violating Rules 1.15(a) and 1.18, MRPC, when he failed to keep his client's funds separate from his office trust account and failed to continuously maintain a minimum balance of \$10,318 in his trust account during the period between his receipt and disbursement of his client's funds. For this and other misconduct, the attorney admitted violating Rules 1.4, 1.15(a), 1.15(b), and 1.18, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For violating Rules 1.4, 1.15(a), 1.15(b), and 1.18, MRPC, the Montana Supreme Court ordered the

attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings. *In re Josh Van de Wetering*, MT PR 17-0253 (2018).

Failing to promptly deliver fund belonging to third party. (Reciprocal Discipline) Attorney represented a bank in 74 real estate foreclosure actions filed in Idaho and Montana and retained a title company to provide title services in connection with the foreclosure cases. For its title services, the title company charged the attorney's firm over \$57,000. The firm, in turn, billed the bank. When the bank paid the costs in full, the attorney deposited the funds into the firm's operating account. Rather than forward the funds to the title company, the attorney used the funds to pay operating expenses. The title company filed a lawsuit in Montana against the firm and obtained a judgment for nearly \$56,000; the title company was only able to collect \$1,179.20 from the firm. The Hearing Board disbarred the attorney for violating RPC 1.15A(b) for failing to promptly deliver funds owed to the client or third person and 8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and ordered him to pay restitution to the title company. Colorado's RPC 1.15A(b), and 8.4(c), are similar or equivalent to Montana's Rules 1.15(b), and 8.4(c), MRPC. Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed identical discipline and disbarred the attorney from the practice of law in Montana. *In re Philip Kleinsmith*, MT PR 17-0663 (2018).

Mishandling and misappropriating client funds; failure to promptly deliver client funds; taking fees before earned; failure to hold clients' property separate from attorney's property; failure to properly maintain IOLTA trust account. Attorney disbursed all or part of his attorney fees and out-of-pocket expenses incurred in certain cases from his IOLTA trust account to himself or others prior to receipt of the anticipated settlement funds, totaling approximately \$89,000. To cover these disbursements, he used funds belonging to others or his own earned fees from settled cases that he had not previously timely disbursed. He also improperly transferred nearly \$180,000 to which he was not entitled from his IOLTA to his operating account. He eventually restored nearly \$157,000 of the improperly transferred funds by leaving over \$115,000 of his own funds in the trust account and transferring \$41,250 from his operating account. He used funds in the trust account belonging to others to cover the remainder. He failed to pay several clients all funds owed to them, totaling approximately \$4,800. He left approximately \$8,300 in the IOLTA, which he used for his own purposes without a proper accounting. He failed to maintain his IOLTA account in accordance with the Trust Account Maintenance and Audit Requirements. He failed to hold unearned retainer funds in his IOLTA until earned. The attorney admitted all material facts alleged in the Complaint, his misconduct, and his violations of the MRPC. All clients eventually received funds owed to them. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court concluding the attorney's use of funds belonging to his clients and/or others constitutes misappropriation and mishandling of funds violated Rules 1.15, 1.18 and 8.4(c), MRPC. His failure to hold property belonging to his clients and/or others separate from his own property violated Rule 1.15, MRPC. His failure to promptly deliver funds to clients violated Rule 1.15, MRPC. Taking fees before they were earned violated Rules 1.15 and 1.18, MRPC. The Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings, including the \$30,000 to ODC for violating Rules

1.15, 1.18, and 8.4(c), MRPC. If reinstated, he must provide CPA-reviewed accounting of his trust account for 10 years. *In re Lucas Foust*, MT PR 16-0301 (2017).

Co-mingling lawyer's funds with client funds in IOLTA. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, wherein he admitted he co-mingled his personal funds with client funds in his IOLTA trust account in violation of Rule 1.15, MRPC. After a Rule 26 hearing, COP accepted the attorney's *Conditional Admission and Affidavit of Consent* and issued its Order of Discipline. For violating Rule 1.15 for this conduct and Rule 1.18 for other misconduct, COP ordered the attorney receive a written public admonition from COP and pay the costs of the disciplinary proceedings. *In re James J. Srenar*, MT PR 17-0260 (2017).

Failure to keep proper records regarding client retainers; failure to promptly deliver refunds to clients. Attorney was in private practice for nearly 20 years before she closed her practice, relocated and began working for various state agencies; however, she continued wrapping up some cases over the next few years. Upon leaving private practice, her firm's IOLTA trust account had a balance over \$30,000. The attorney had not kept proper trust account records; she attempted to construct an accounting, which revealed that nearly \$18,000 was owed to the firm's former clients. She refunded one former client for an unused retainer. Four years later, she paid the firm \$12,000 for fees earned. Over a decade later, she refunded the remaining clients from the trust account; not all checks were negotiated, leaving a balance of approximately \$4,000. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court concluding the attorney violated Rule 1.15(a) by failing to keep proper trust account records and violated Rule 1.15(b) by failing to promptly deliver funds to which clients were entitled. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney be publicly admonished by COP in writing, be assigned a mentor for five years if she re-enters private practice, disburse the remaining funds owed to clients to the Montana Justice Foundation if unable to locate them, and pay costs of the disciplinary proceedings for violating Rules 1.15(a), 1.15(b), 1.16(d), and 1.18(e), MRPC. *In re Lorraine Schneider*, MT PR 16-0437 (2017).

Failure to deliver client file upon request. (Reciprocal Discipline) The attorney stipulated and admitted violating Oregon's Rules of Professional Conduct in two separate matters. In the second matter, he admitted violating Oregon's RPC 1.15-1(d) by failing to provide his client the property to which his client was entitled after the client sent multiple requests for his file. After hearing before the Oregon Disciplinary Board, the *Stipulation for Discipline* was approved by the Oregon Supreme Court for this and other misconduct, and the attorney was suspended for 120 days, with all but 30 days stayed until he successfully completed a 2-year term of probation for violating the Oregon RPC 1.4(a), 1.15-1(d), and 8.1(a)(2). He was further ordered to be subject to the formal reinstatement requirements under Oregon's BR 8.1. Pursuant to Rule 27, MRLDE, the Montana Supreme Court imposed identical discipline for violations of the equivalent or similar Montana Rules 1.4(a), 1.15(b), and 8.1(b), MRPC. *In re Edward LeClaire*, MT PR 17-0034 (2017).

Failing to hold client funds separate from attorney's funds; failure to deposit client retainer into IOLTA trust account. Attorney submitted a *Conditional Admission and Affidavit of*

Consent to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC in relation to two separate matters. He admitted violating Rules 1.15 and 1.18, MRPC, by failing to hold funds belonging to his client separate from his own property. More specifically, he failed to deposit retainers received from two clients into an IOLTA trust account and instead co-mingled the funds with his own. He also admitted he did not have an IOLTA trust account. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court, be placed on probation for two years subject to conditions, and pay costs of the disciplinary proceedings. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to keep client funds separate from attorney's funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.5(b), 1.15(a), 1.18 and 1.18(e), MRPC, during his representations of a husband and wife in a related matter. He was retained to represent the wife during a federal criminal investigation and was paid \$2,500. After representation of the wife ended, the husband paid the attorney \$5,000 to represent him during the same federal criminal investigation. The attorney admitted he failed to deposit either retainer payments into an IOLTA trust account, but rather deposited the funds into his own account before they were earned in violation of Rule 1.15(a). After a Rule 26 hearing, the COP issued its Findings of Fact, Conclusions of Law and Order, concluding, for this and other misconduct, the attorney violated Rules 1.5(b), 1.15(a), 1.18, and 1.18(e), MRPC, and ordered him to receive a public admonition by COP and pay costs of the disciplinary proceedings. *In re Paul G. Matt*, MT PR 15-0654 (2016).

Mishandling client funds. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. According to the uncontested report of the referee adopted by the Court, the attorney made misrepresentations to his client, mishandled his client's cost funds by applying them to his attorney's fees, deliberately failed to finish his client's matter, and failed to properly and adequately communicate and address issues with his client. He specifically failed to correct or address billing issues, consciously chose not to file a corrected amended judgment for his client unless and until he received all fees from the client, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client's permission, failed to address issues related to his failure to retain services of a court reporter for trial as directed by his client, and failed to submit a corrected amended judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana's Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Failure to safekeep property; co-mingling funds; misappropriation and theft of client or other funds; failure to notify and/or deliver client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney failed to promptly deliver settlement funds belonging to his clients or others and failed to keep those funds separate from his own after fraudulently acquiring the funds when he settled the client matters without their knowledge or consent. He further failed to inform his clients or third parties to whom the funds belonged of the settlement, lied to some about receiving the funds, forged signatures, and stole and misappropriated their funds for his own purposes. He likewise stole and misappropriated funds from other clients received through probate proceedings or real estate or business transactions and lied to the clients or third parties about the amount of funds owed to them. By this conduct, the attorney violated Rules 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent, which the Court accepted. The Montana Supreme Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Misappropriating and mishandling funds; co-mingling client and/or third party funds; failure to hold client and/or third party property (funds) separate from his own; failure to promptly deliver client and/or third party funds; failure to provide accounting of funds. Attorney was hired by a widow on a contingency fee basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. The insurer wired the funds to the attorney's IOLTA trust account in October 2008. He did not immediately distribute settlement funds to the heirs or to himself for his fees. By the end of June 2010, the attorney's trust account balance was \$10.47. Between October 2008 and March 2010, the attorney paid himself \$183,100; however, he was only entitled to \$120,000 in attorney fees. During that time, he disbursed approximately \$51,000 to his client or others on her behalf, \$32,000 to his client's non-attorney advocate, and \$32,524 to others for litigation expenses. No funds were disbursed to the other heirs. The attorney thereafter paid himself and his client, or others on her behalf, additional funds in the IOLTA trust account using funds belonging to others. At a hearing in the state probate case in February 2013, the attorney misrepresented to the Court he was holding the settlement proceeds totaling \$110,000 in a separate trust account and had made some disbursements, including attorney fees and costs. He did not comply with the Court's order to submit an accounting of all settlement funds. In January 2014, he provided the personal representative a list of his IOLTA trust account checks paid to his client between October 2008 and July 2013 totaling approximately \$55,000. He failed to promptly deliver funds to the heirs,

failed to hold property belonging to his client and/or others separate from his own, used funds belonging to himself or others to cover the monies paid to his client, and misappropriated and mishandled a substantial portion of the settlement proceeds in violation of Rules 1.15, 1.18 and 8.4(c), MRPC. He failed to provide an accounting to the personal representative upon request in violation of Rule 1.15, MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC, for this and other misconduct. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations, with the exception of disgorgement of fees and the amount of restitution, and disbarred the attorney, ordered him to pay restitution to the heirs totaling \$65,547.10, and pay costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Failure to deliver property/papers belonging to others; failure to produce accounting of funds.

Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him. ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact,

Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 14-0055 and PR 14-0245 (2014).

Misappropriation and mishandling client funds; failure to promptly deliver client funds.

Attorney filed a lawsuit on his client's behalf regarding a personal injury claim. He settled the case for \$12,173.18 new money, and the insurer sent him check for that amount. He deposited the money into his trust account almost 16 months later and immediately wrote himself a check for fees and costs totaling \$937; however, he did not disburse any funds to his client. Within two months, he had withdrawn all of the settlement funds, using them for his own purposes. The client had made numerous inquiries about the status of the settlement proceeds. After the attorney received his client's grievance, he sent him a check for the entire amount of the new money settlement three years after receiving it from the insurer. In order to cover the check, he deposited \$12,500 into his trust account that same day. The attorney delayed responding to the grievance for six months after having to appear and show cause to the Commission for his failure to respond. After several months of requests, the attorney eventually provided his trust account records to ODC. ODC's requests for admission were deemed admitted after a motion to compel discovery was filed, and the attorney failed to respond or otherwise plead. Following a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.3, 1.15, 1.18, 8.1(b), and 8.4, MRPC, and Rule 8A(6), MRLDE. Upon the Commission's recommendation, the Supreme Court indefinitely suspended the attorney from the practice of law for one year and ordered him to pay the costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 13-0321 (2014).

Misappropriation and co-mingling client funds; failure to promptly notify and deliver funds to client and health care providers; failure to keep proper trust account records/client ledgers; failure to provide clients an accounting.

Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The checks were deposited into the attorney's trust account but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to

himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Failure to promptly deliver funds to third party. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.7, 1.15, and 2.1, MRPC. Specifically, he admitted he represented an injured party from a motor vehicle accident. The chiropractor who treated the injured party was the attorney's former client. The attorney believed the chiropractor still owed him money from his prior representation. After the chiropractor sent his bills to the insurer of the liable party for payment, the insurance company sent a check to the chiropractor made payable to him, the attorney and the injured party. The attorney advised the chiropractor he would endorse the check after he received payment for the balance due on his bill. With no response from the chiropractor, the attorney requested the insurance company re-issue the check payable only to him. Upon receipt, he deposited the check into his trust account. The attorney paid the chiropractor the money due to him after he filed his complaint. The attorney admitted that he failed to promptly deliver funds to his former client/third party which he was entitled to receive in violation of Rule 1.15; that there was a significant risk his representation of his new client would be materially limited by his personal interests in violation of Rule 1.7; and that he failed to exercise independent professional judgment and render candid advice in violation of Rule 2.1. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be publicly censured, pay restitution of interest on the funds he delayed paying to his former client, and pay the costs of the disciplinary proceedings. *In re Robert G. McCarthy*, MT PR 13-0492 (2014).

Withdrawing funds from trust account before earned. Attorney was retained to prepare and file a marriage-based immigration petition with the U.S. Citizenship and Immigration Services of the Department of Homeland Security. She deposited the \$2,000 retainer plus an additional \$900 into her trust account. For over a year, the attorney continually misrepresented to her clients that she had filed the petition and paid the \$420 required filing fee. She sent the clients an invoice indicating the filing fee had been paid and their retainer balance was less than \$65. She had withdrawn nearly all of the funds from her trust account. One year after being retained, the attorney told her clients the filing fee had not cleared her account so she would just re-file the petition. She again misrepresented to her clients that she had filed the petition. Three months later, she informed them she could no longer represent them and sent the petition and filing fee to the Department of Homeland Security the following day. Throughout the representation, she failed to keep her clients reasonably informed about the status of their case and/or failed to promptly comply with their requests for information. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it

concluded the attorney violated Rules 1.3, 1.4, 1.15, 1.18, 8.4(c), MRPC. The COP recommended the attorney be publicly admonished by the COP, and be assessed the costs of the disciplinary proceedings. The Court accepted the COP's decision as final. *In re Deborah S. Smith*, MT PR 13-0296 (2014).

Misappropriation and failure to safekeep property. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to deposit unearned fee into IOLTA trust account; failure to timely return unearned fees. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He

did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Misrepresentation of role in lawsuit; failure to correct misrepresentation; conflict of interest; obtaining confidential information; failure to return confidential file; failure to promptly withdraw from representation; failure to communicate objective with client; failure to act diligently. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

Failure to notify and promptly deliver funds to third party to satisfy liens. Attorney was hired to represent two clients regarding their personal injury claims arising out of a motor vehicle accident. The treating chiropractic clinic submitted liens to the attorney for treatment provided to the clients. Upon receipt of the insurance company's checks made payable to the clinic, the attorney deposited the checks into his IOLTA trust account instead of immediately forwarding them to the clinic. The clinic learned of the checks by its own independent inquiry to the attorney. After being notified the clinic had filed a complaint against him, the attorney paid the clinic the amount it was due. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rule 1.15(b), MRPC. The COP recommended the attorney be publicly admonished by the COP, adopt and enforce written procedures for prompt notification and delivery of checks payable to lienholders, disallow staff from using a signature stamp or electronic signature for checks drawn on or deposited into his IOLTA trust account, and be

assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon S. Neuhardt*, MT PR 12-0066 (2013).

Failure to keep personal funds separate from client funds; failure to properly maintain trust account. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.15 and 1.18, MRPC. Specifically, he admitted co-mingling his personal funds with client funds in his office IOLTA trust account and paying certain office and personal expenses from that account during the period of December 2003 through June 2011. He also admitted failing to maintain his IOLTA trust account in accordance with the Trust Account Maintenance and Audit Requirements pursuant to Rule 1.18(e)(2), MRPC. By his conduct, he committed multiple violations of Rules 1.15 and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re J. Gregory Tomicich*, MT PR 12-0064 (2013).

Failure to deposit unearned fees into trust account; failure to comply with Trust Account Maintenance Rules. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to safekeep property; failure to return funds; withdrawing funds without knowledge or consent of the interested parties; disbursing funds without authorization; utilizing an out-of-state, non-interest bearing trust account; misappropriation of funds; making misrepresentations. Attorney drafted documents to implement certain investment programs, which were promised to result in substantial returns on the capital. He also met with several

potential investors to explain the implementation and participation documents. He represented certain individuals and their entities who participated in the investment programs, along with several others. The funds paid to invest in the programs were deposited into a trust account established by the attorney. The investors were assured the funds would not be used or depleted and would be repaid with a return of between 300% and 400% within one year. Investors were to receive quarterly returns on their money, and the attorney was responsible for transferring funds and remitting payments to investors. The attorney told investors that the funds would be held in trust and not transferred or removed without their permission. The attorney incidentally established two separate trust accounts at a bank outside the state of Montana. His legal fees and expenses were paid from one of the trust accounts. The attorney made several unauthorized transfers to and between the trust accounts he controlled – the money of which belonged to either clients or investors – and made unauthorized payments from those accounts to third parties. The transactions were not for the benefit of his clients or the investors. When investors demanded the return of their money, the attorney did not have sufficient funds in the account and did not return the money. Investors filed lawsuits against the attorney and obtained judgments, some of which had not been satisfied. The attorney attempted to delay, confuse, and avoid admission of his misappropriation of funds. After finally admitting to the misappropriation, he asserted that he did not benefit personally; however, he received nearly \$168,000 over a 16-month period for fees, costs, and expenses. The ODC filed a formal complaint alleging the attorney knowingly used funds held in trust for an improper purpose and without the knowledge or consent of the owners of the funds; misled investors when they sought information regarding funds held in trust; personally benefitted by paying himself with trust funds while holding off requests of investors for information or return of their funds; misappropriated funds of an investor without its knowledge, consent, or permission; failed to maintain funds in an interest-bearing trust account; and failed to maintain funds with a Montana bank. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.15(a), 1.18, and 8.4, MRPC. The COP recommended the attorney be disbarred from the practice of law, pay restitution to two of the investors if he were to seek reinstatement, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and disbarred the attorney from the practice of law, ordered him to pay restitution to two investors (\$550,000 to one and \$130,000 to the other) as a condition for applying for reinstatement, and pay the costs of the proceedings. *In re David P. Rodli*, MT PR 10-0412 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained to handle a bankruptcy for his clients, who paid him a \$1,800 flat fee. The attorney deposited the money into his operating account and not into his trust account; he took the fee before it was earned. The attorney failed to communicate the fee arrangement and the scope of his representation to his clients in writing. The attorney failed to file a bankruptcy petition for his clients. He accepted the representation despite his large caseload. The formal complaint alleges violations of Rules 1.3, 1.5, 1.15, 1.16(a) and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney

to receive a public censure, to be placed on probation for two years, and to pay costs of the disciplinary proceedings. *In re Stephen R. McCue*, MT PR 09-0611 (2010).

Failure to communicate; settled case without authority; failure to expedite litigation; failure to respond to discovery requests; failure to comply with court order; falsified documents; failure to seek and obtain expert opinion, resulting in case dismissal. (Reciprocal discipline) The North Dakota Disciplinary Board filed a Petition for Discipline regarding three separate matters wherein it alleged the following. Attorney represented a client to defend it in a civil action filed in Montana. The attorney failed to respond to the clients' insurer's status requests and failed to notify his clients of mediation. At the mediation, the attorney negotiated an \$80,000 settlement without his clients' or his clients' insurer's authority. The attorney personally funded the settlement, depositing the money into his firm's trust account to be remitted to opposing counsel. The attorney represented another client regarding a civil action filed against him in Montana. The attorney failed to keep his client informed of important events, deadlines and discovery obligations. The attorney appeared at the Court-ordered mediation without a responsible decision-maker, as ordered. As a result, the Court sanctioned the client and ordered him to pay the plaintiff's costs incurred in attending the mediation. The attorney, thereafter, failed to respond to discovery requests. As a sanction, judgment was entered in favor of the plaintiff on liability; final judgment was entered against the attorney's client in the amount of \$143,713. The attorney falsely assured his firm that he had kept his client informed and falsified backdated letters so it appeared he had done so. The firm paid the judgment against the client. The attorney represented a plaintiff who sued a health care professional in North Dakota. The attorney failed to diligently seek and obtain an expert opinion, and the opposing party moved to dismiss the case. The Petition for Discipline alleged violations of Rules 1.2, 1.3, 1.4, 1.15 and 8.4, NDRPC. The attorney submitted a Consent to Discipline wherein he consented to suspension from the practice of law for six months and a day. The North Dakota Supreme Court accepted a Stipulation, Consent to Discipline and Recommendation of Hearing Panel and suspended the attorney from the practice of law in North Dakota for a period of six months and a day and ordered him to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2002), suspending the attorney from the practice of law in Montana for a period of six months and a day and ordering him to pay costs. *In re Shane D. Peterson*, MT PR 09-0416 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney

prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to deposit retainers in trust account. Attorney was hired to represent a widowed, elderly woman in three separate matters: termination of a Charitable Remainder Trust (CRT), a tort action and a conservatorship proceeding. She had previously executed an unlimited power of attorney for her 71-year-old nephew to manage her assets. Between the nephew's mishandling of her assets and the attorney's fees charged to the client, her \$1,000,000 estate was depleted to less than \$5,000. The attorney originally signed a fee agreement with the client to terminate the CRT for an hourly rate of \$125. The CRT consisted of \$365,000 of the client's \$1,000,000 estate. The CRT took less than one month to terminate, and all of the beneficiaries voluntarily relinquished their interests in the CRT. The client paid the attorney over \$8,300 for the 65.9 hours of work he claimed to have performed in the matter. The attorney signed a second, separate fee agreement two weeks later related to the tort action. The agreement provided that the client would pay the attorney a \$20,000 retainer, which would be billed against at \$125 per hour. It further provided that they would divide any recovery in the action 35% to the attorney and 65% to the client. Prior to the resolution of the case, the attorney was removed as the attorney and it ultimately settled for \$150,000. However, he had already collected approximately \$175,000 for his work performed in the tort action based on his hourly agreement. Three years later, the attorney received an additional \$50,000, but based on the attorney's accounting, it is impossible to determine to which litigation the \$50,000 retainer fee applied. He contended he used it to cover the cost of his work in the third matter, the conservatorship action, although it had not begun until 18 months after the retainer was collected. The attorney did not

place either of the retainers into an IOLTA account or a client trust account, but rather placed the \$20,000 and \$50,000 retainers directly into his operating account. The attorney next modified the first fee agreement relating to the CRT termination from the hourly fee arrangement for work already completed to a contingent fee arrangement. He wrote the client a letter informing her that the contingent fee for his representation of her in the CRT termination, resolved almost two years earlier, would be one-third of the amount he had “recovered” through his prosecution of the uncontested termination proceeding. The elderly woman signed the consent form at the bottom of the letter. A few months later, the attorney further refined the fee agreement relating to the CRT termination through a letter to the nephew. He acknowledged receipt of \$10,000 and confirmed he would receive \$10,000 monthly installments for the remainder of the year, totaling \$70,000, plus an additional \$50,000 the following year. The attorney revised the agreement a final time, three years later, through a “supplemental attorney-client fee contract” intended to replace the original hourly fee agreement in its entirety and to be “retroactively effective” from the date of the original agreement. The supplemental agreement provided that the attorney would receive one-third of \$365,000, which was the value of the CRT, for a total of \$121,545. The client paid the attorney a total of \$296,545 for his services in the three separate matters. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 1.5, MRPC, for his unreasonable fee in the CRT termination action and Rules 1.15 and 1.18, MRPC, for failing to deposit the \$20,000 and \$50,000 retainer fees into a trust account. The Montana Supreme Court ordered the attorney receive a public censure by the Court with a 60-day suspension commencing as of the date of the public censure, and to pay the costs of the disciplinary proceedings. *In re Engel*, 2008 MT 42, MT 05-174 (2008).

Misuse of client funds. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed, and a \$10,000 judgment was entered against the attorney’s clients. The Montana Supreme Court found the attorney’s conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney’s office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney’s conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC’s inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Misappropriation of client’s funds for personal use. The client hired the attorney to represent him as personal representative of his father’s estate. The attorney received \$74,000 from the decedent’s pension plan on behalf of the estate. The attorney misappropriated for her own use at least \$52,131.21 of the pension plan money. The client filed an application with the State Bar of Montana’s Lawyers Fund for Client Protection. The Lawyers Fund paid the estate \$52,131.21. The Supreme Court of Montana found that the attorney misappropriated \$52,131.21 from the

estate for her own use, admitted the criminal act of felony theft of client's funds, and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in the misappropriation of client funds. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.15, 8.4(b), and 8.4(c). The Court ordered the attorney be disbarred and be assessed payment of the costs of the proceeding. *In re Dupuis*, MT PR 06-0006 (2006).

In a *Verified Conditional Admission, Stipulation Regarding Extension of Current Suspension, Payment of Assessed Costs and Restitution to Affected Clients* the attorney admitted to violation of MRPC Rules 1.3, 1.5, and 1.15. The Montana Supreme Court accepted the admission and ordered that the attorney be disciplined by extension of his current suspension for one additional year. The attorney, therefore, is indefinitely suspended for a minimum of three years. Further, the Court ordered the attorney pay restitution to the affected clients and costs to the ODC and COP. *In re Atcheson*, MT PR06-0781 (2006).

Unapproved fee collection. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admits violating Rule 1.15(b), MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Failure to promptly notify client and refund client funds. Attorney hired to represent a client in a bankruptcy proceeding. The attorney was paid and accepted a retainer. When the bankruptcy was discharged, the attorney received a refund check that he deposited into his trust account. The attorney failed to promptly notify the client of the arrival of the deposit or deliver the funds to his client. The attorney admitted violating Rule 1.15(b), MRPC, and other rules of professional conduct. The Commission on Practice reviewed the attorney's tendered admission and recommended approval to the Montana Supreme Court. The Court accepted the Commission's recommendation and suspended the attorney for 30 days for his admitted violations. *In re Shields*, MT 04-197 (2004).

Failure to hold retainer fees separate from personal funds. Attorney agreed to represent clients in various matters. He requested and received retainers from the clients at the start of the representations. The retainers were deposited in the attorney's operational account before the fees were earned. The Commission on Practice found the conduct violated Rule 1.15, MRPC. The attorney admitted his misconduct pursuant to Rule 26, MRLDE, and The Commission on Practice reviewed his admissions and recommended the Montana Supreme Court accept them. The Court did so. The Montana Supreme Court suspended the attorney indefinitely for a period of not less than two years for violating Rule 1.15, MPRC, and other rules of conduct. *In re Atcheson*, MT 04-091 (2004).

Failure to keep records of client funds. The Lawyers Fund for Client Protection investigated the attorney's trust account after receiving overdraft notices. The investigation revealed the attorney did not maintain separate ledgers for each client and transaction, did not account for transactions made on his account, did not maintain a check register, did not keep a journal of cash receipts or disbursements and did not follow accounting requirements. The attorney, who

cooperated with the investigation, admitted violating Rule 1.15, MRPC. The Commission on Practice reviewed the attorney's admissions and recommended approval to the Montana Supreme Court. The Court accepted the admissions and suspended the attorney for not less than three years for this and other admitted misconduct by the attorney. *In re Hussey*, MT 03-735 (2004).

Failure to hold client funds separate from attorney funds; failure to supervise employee. The attorney, pursuant to a Rule 26, MRLDE, tendered admission, admitted the following: The attorney employed a secretary/paralegal for approximately 4 years who embezzled several hundred thousand dollars from estates represented by the attorney. The secretary wrote herself and her creditors checks on the law firm account and forged the attorney's signature. The attorney had access to all bank records, client files, bank statements and client accounts during the period of employment. In addition, client funds were also commingled with and used for general office purposes. Business records showed the attorney's office accounts would have operated in the negative from time to time but for unearned client funds and embezzled money in the office accounts. Despite having access to the pertinent records, the attorney failed to observe his employee's activities or properly monitor the client accounts. The attorney admitted violating numerous rules of professional conduct as a result of these events, including Rules 1.15 (a) and (b), MRPC, for failing to hold client property separate from his own property, failing to maintain trust accounts as prescribed by the Court's Trust Account Maintenance and Audit Requirements (1989), and failing to promptly deliver to clients or third persons funds that clients or third persons were entitled to receive. The Montana Supreme Court accepted the attorney's admission and indefinitely suspended the attorney for not less than 18 months and ordered the attorney to pay restitution to his clients. *In re McGee*, MT 03-723 (2004).

Failure to safeguard property and misuse of client funds. Attorney settled a client's personal injury case and retained, but did not pay, \$32,000 from the settlement funds owed to a medical provider. The attorney kept the money and used it for his own purposes. The attorney admitted violating Rule 1.15, MRPC, and other rules of professional conduct. The Commission on Practice reviewed the attorney's admission and recommended approval to the Montana Supreme Court, which suspended the attorney indefinitely for a period of not less than four years for this and other professional misconduct. *In re Yoder*, MT 02-753 (2003).

Withdrawal of client funds for personal purposes; misappropriation of client funds. Attorney's law partner was appointed conservator of an estate. Attorney performed legal work for the estate relating to the sale of real estate assets. A special account was established into which the proceeds from the sale of real estate assets were deposited. The attorney wrote 25 checks to himself from this account and deposited the funds into his personal account. The attorney also withdrew substantial sums from the account in cash and bank draft, which were used to pay other clients money owed by the attorney or to pay costs in matters unrelated to the estate. With the attorney's consent, the Montana Supreme Court suspended the attorney on an interim basis. At a subsequent hearing, the Commission on Practice determined the attorney's misconduct violated Rule 1.15(a), MRPC. The Commission rejected the attorney's mental condition as a mitigating factor because he admitted he knew what he was doing was wrong. The Montana Supreme Court found that clear and convincing evidence substantiated the

Commission findings and disbarred the attorney for this and other violations. *In re Beccari*, MT 01-164/165 (2001).

Failure to return client property; failure to account. Attorney was hired to represent a client with an interest in an estate. The attorney prevailed on a motion to have his client appointed as conservator of the estate. The client requested and received from his client funds with which the attorney was to conduct an investigation of the bond holdings of the estate. The attorney hired a third party to conduct the investigation. Substantial funds remained with the attorney, who decided to close his law office. The attorney wrote to the client, stating the funds would be returned to the client. When the money did not arrive as promised, the client's new lawyer demanded the return of the funds. They were not sent. Further demands were made by the new lawyer and the attorney stopped responding. The Commission on Practice found the failure to safeguard his client's property violated Rule 1.15(a), MRPC; his failure to return client property, which the client had demanded and had a right to receive, violated Rule 1.15(b), MRPC. The attorney further violated Rule 1.15(b) by failing to provide an adequate and full accounting of the client's property. The Commission on Practice called the attorney's conduct "abhorrent" and "unanimously, unequivocally and unconditionally" recommended the disbarment of the attorney. The Montana Supreme Court noted in its order regarding this matter that it had already disbarred the attorney in a separate proceeding. *In re Holt*, MT 00-296 (2001).

Use of client funds to pay expenses of another client; failure to safeguard. Attorney hired to represent an estate in probate proceedings. The estate had assets in excess of a half-million dollars. Most of the funds were deposited into an estate account over which the attorney maintained control. More than half of the estate funds were withdrawn from the estate account and deposited into the attorney's trust account. Most of the funds from the trust account were then transferred into the attorney's operating account and used for various purposes, including paying the expenses of another client. The Commission on Practice called the attorney's misuse of client funds "staggering," and violative of Rule 1.15, MRPC. The Commission determined the attorney's failure to safeguard client funds and the making of unauthorized distributions to the attorney violated the rule. The Montana Supreme Court adopted the Commission findings and disbarred the attorney for this and other violations of the rules of professional conduct. *In re Holt*, MT 99-615 (2000).

Exertion of control over a client's property and using it for counsel's own personal purpose. Attorney represented an elderly woman in a variety of situations. As the client grew older, she began suffering from a variety of disorders, including mild dementia. During the course of this representation attorney borrowed money from his client and engaged in other personal transactions with the client. The client deposited large amounts of money in the attorney's trust account and withdrawals from these funds were not documented. A complaint was filed with the Commission on Practice who found that the attorneys' financial transactions with his client were advantageous to him, and considering his client's age and mental condition, he took unfair advantage of her. As far as the transaction where the client deposited money into the attorney's trust account, the attorney had a duty to have the funds available for her and to make disbursements upon her demand. Attorney violated this duty under 1.15(a), MRPC, by investing the client's funds for his own purposes. The Commission recommended that the attorney be

suspended from the practice of law for one year, but the Montana Supreme Court chose to publicly censure the Attorney instead. *In re Leckie*, MT 98-667 (2000).

Hiding client funds from creditors in household furnace; prompt delivery and accounting.

The attorney was hired to represent a client in a personal injury action. The case settled with the insurance company and the attorney established a trust account into which he placed the settlement funds. Relatively small amounts were withdrawn for the client and attorney. Then, fearing a creditor of his client might execute against the trust account, the attorney withdrew all of the remaining settlement funds in cash and placed the funds in a safe hidden inside a non-functioning 4,000-pound furnace in the attorney's home. Several months later, the attorney withdrew cash from his furnace, obtained cashier's checks and paid various health care providers who were owed money by his client. The COP rejected the attorney's motion to admit polygraph tests in evidence at trial under *State v. Staat*. The Commission on Practice determined the attorney violated both Rule 1.15(a) and 1.15(b), MRPC. Declaring attorney's conduct in hiding the money in his furnace "at best paranoid and certainly not reasonable," the Commission concluded the attorney had failed to safeguard the client's property and properly account for it. For delaying the payment of debts to medical creditors and keeping inadequate records, the Commission determined the attorney violated 1.15(b). For this and other violations, the Montana Supreme Court suspended the attorney--already serving a three-year suspension--for an indefinite period of not less than five years. *In re Asselstine*, MT 98-551 (2000).

Failure to keep client funds separate from personal funds. Attorney, in the course of running her law practice, used client funds intended for litigation costs for her personal use. The attorney would then use money received from other clients to cover the litigation costs of those clients from whom she had diverted the funds. Monies received for filing fees and other obligations were not placed in a trust account. The attorney also agreed to refund portions of retainers, and then failed to do so. The Commission on Practice found these actions to violation Rule 1.15, MRPC. The attorney--who was indefinitely suspended at the time--was disbarred for this and numerous other violations, which the Montana Supreme Court described as an unparalleled "pattern of unethical conduct, disregard for the interests of her clients and others, and disdain for the fundamental precepts of honesty and trust, all of which render her patently undeserving of the privilege of being a member of the bar." *In re Sapp-LeClaire*, MT 97-608 (1998).

Delaying disbursement of client's security deposit to new attorney. Attorney was retained to defend clients in a nonjudicial foreclosure on their residence and to bring claims against the foreclosure trust beneficiaries for misrepresenting the subject property. Attorney filed a civil action on behalf of his clients and obtained an agreement that foreclosure would be stalled until the civil action was resolved. The action was filed on the condition that the clients would deposit for the attorney's control the remaining balance of the purchase price due on the secured obligation. The money was then deposited into an interest-bearing account under the attorney's name as trustee for his clients. The clients later became dissatisfied with the attorney's services and retained other counsel. The new attorney demanded the security deposit, but the former attorney refused to give it to him, arguing that it was placed in a time deposit. This argument was found to be false and misleading. The attorney delayed disbursement of the funds and later gave the new attorney a personal check for the amount. Attorney was suspended for five months

for violations of Rule 1.15(a), 1.15(b), MRPC, and another rule of professional conduct. *In re Atherton*, MT 96-655 (1997).

Took portion of settlement funds/improperly retained interest earned on trust account deposit. Attorney was hired to probate the estate of a woman killed in a car wreck and pursue wrongful death and survivorship actions. No written fee agreement was entered into between the parties. However, the heirs and the personal representative contended they agreed to pay the attorney the statutory rate for the probate services but that he was not to be paid any additional amount for the tort claims. The attorney claimed he was entitled to receive the statutory rate plus a percentage of the recovery on the tort claims. However, the attorney told the insurance company of the alleged tortfeasor that he did not have any contingent interest in the recovery. The attorney eventually settled the tort claims and deposited the funds into his trust account. The attorney then began withdrawing money from the trust account and placing it in his office account. The heirs of the decedent hired other counsel, to whom the attorney turned over the balance of settlement funds. However, the attorney retained the interest that had accrued on money while on deposit in his trust account. The Commission on Practice determined the attorney violated Rule 1.15(a) and (c), MRPC, when he took and converted to his own use proceeds from the settlement. The Commission further found a violation of 1.15(a) when the attorney took the interest earned on the settlement funds while on deposit in his trust account. The Montana Supreme Court adopted the findings of the Commission and suspended the attorney for 90 days for his violations of Rule 1.15, MRPC. *In re Johnson*, MT 95-359 (1996).

Used law firm trust fund to conduct other business without adequate separation or accounting. The attorney represented American families who sought to adopt foreign infants from Macedonia. The Commission on Practice found that the corporation created by the attorney to conduct this business improperly used his law firm trust account without maintaining a separation of funds or a proper accounting. The Montana Supreme Court disbarred the attorney for violating several rules of professional conduct, including Rule 1.15, MRPC. *In re Alexander*, MT 94-358 (1995).

Failure to promptly notify and deliver funds to client; failure to keep money separate. The attorney was hired to assist the client in obtaining suitable living arrangements and determining what the client was entitled to as an heir of her mother's estate. The client was a recovering alcoholic with limited cognitive ability. The client also applied for and received SSI disability benefits, although the record was unclear how much work the attorney performed in obtaining these benefits for the client. The attorney determined the client had inherited 160 acres in North Dakota. The client decided to sell the land and with the attorney's help negotiated the sale. The Commission found no evidence the attorney ever paid the client more than \$3,000 of her money. The payments were made with several checks, some of which were issued more than a month after the funds arrived. The attorney kept most of the money for himself. The attorney also failed to keep a ledger of payments from his trust account. The Commission on Practice determined the attorney violated Rule 1.15(b), MRPC, when he failed to promptly notify his client of the receipt of her funds, when he failed to promptly deliver the client's money to the client and by failing to promptly render a full accounting of her money. The Commission also concluded the attorney violated Rule 1.15(c), MRPC, by failing to keep his client's money separate until he had accounted for his reasonable attorney fee, and until his and the client's

respective rights to the funds had been determined. The Commission also found violations of the Trust Account Maintenance Rules. The Montana Supreme Court suspended the attorney for five months for violating Rule 1.15, MRPC, and another violation of the rules of professional conduct. *In re Tramelli*, MT 93-117 (1995).

Use of client funds for personal purposes. Attorney mingled client funds with his own funds and pledged them as well as his law firm's pension funds for his personal obligations without the client's knowledge or consent. Further, attorney failed to remit the client funds upon request of the client, and failed to remit the pension funds to his deceased law partner's spouse. The Commission on Practice determined this conduct violated all three subsections of Rule 1.15, MRPC, as well as other rules of professional conduct. In mitigation, five lawyers and judges, including a former Montana Supreme Court Justice, testified as to the attorney's reputation and character over a forty-year legal career. The Montana Supreme Court publicly censured the attorney for his conduct. *In re Berger*, MT 92-335 (1993).

Misappropriation of client funds. Attorney was appointed guardian of the person and estate of a client. The man died in 1982. A state district judge approved the attorney's report listing the assets of the estate and allowed the attorney his fee for his services as guardian. When no one initiated the probate of the estate by 1989, the U.S. Veteran's Administration requested the county public administrator to do so. The administrator discovered irregularities and eventually recovered a judgment against the attorney. The Commission on Practice found the attorney had taken money from the account improperly. "He offered no explanation for his conduct," says the Commission findings. "The obvious inference is he thought there were no heirs to dispute or question his action," and the attorney took money from the estate between 1984 and 1987. The Commission determined that the attorney failed to preserve estate property separate from his own and failed to deliver the property to the personal representative, in violation of Rule 1.15, MRPC. The Montana Supreme Court adopted the Commission findings and disbarred the attorney for this and other MRPC violations. *In re Romine*, MT 92-251 (1993).

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. A lawyer is entitled to retain and is not obliged to deliver to a client or former client papers or materials personal to the lawyer or created or intended for internal use by the lawyer except as required by the limitations on the retaining lien in Rule 1.8(i). Except for those client papers which a lawyer may properly retain under the preceding sentence, a lawyer shall deliver either the originals or copies of papers or materials requested or required by a client or former client and bear the copying costs involved.

Failure to protect client's interests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint regarding two separate

matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. In the first matter, the attorney was retained to pursue a breach of contract action related to faulty repairs on his client's truck. He filed a lawsuit, discovery ensued, and he filed an opposed motion to amend the complaint. No ruling or activity took place thereafter for more than a year until the attorney moved to withdraw and filed an attorney's lien. The attorney had previously determined he could no longer ethically represent his client after learning of the client's alleged fraud and so informed his client, but he failed to file a motion to withdraw until 16 months later, which the Court eventually granted after the attorney renewed his motion with further explanation and the case had been dismissed for failure to prosecute. The attorney's failure to protect his client's interests and timely withdraw from representation violated Rule 1.16(d), MRPC. In the second matter, the attorney's firm was retained to pursue a wrongful termination and hostile work environment claim. The firm filed the lawsuit and later amended the suit to include additional defendants and claims. The Court later dismissed two defendants and the hostile work environment claim and ordered the firm to file a Second Amended Complaint to correctly caption the parties in 30 days. Neither attorney handling the case followed up with the client or filed the Second Amended Complaint or any other pleading. After the client contacted them, they undertook settlement discussions and communicated a proposal to the client; he advised them to pursue negotiations and discovery. Neither attorney responded to the client until he emailed them again three months later. The attorney advised the client the firm could no longer represent him and would move to withdraw from the case. The client requested a copy of his file, but the attorney failed to provide it or respond at all. Three months later, the client terminated his representation. The attorney moved to withdraw and mailed the file to the client after the Court granted the motion. The attorney's failure to protect his client's interests violated Rule 1.16(d), MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the *Conditional Admission* and ordered the attorney be publicly admonished by COP, be placed on probation for three years with conditions, and pay the costs of the disciplinary proceedings for his multiple violations of Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. *In re Matthew Lowy*, MT PR 20-0592 (2021).

Failure to return unearned fees after representation terminated. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights matter, but he failed to complete any legal services. His client submitted a grievance to ODC wherein he requested a refund of his retainer. The attorney advised ODC he intended to refund \$1,500 of the retainer but failed to do so in violation of Rule 1.16(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than one year and ordered him to pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to withdraw after health impaired attorney's ability to represent clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning, paid a \$2,700 retainer, and given pertinent and necessary information to begin. The attorney failed to complete the work and failed to reasonably communicate with her clients because her health issues impaired her ability to represent them. Her failure to withdraw from representing them thereafter violated Rule 1.16(a), MRPC. After her representation was terminated, she failed to refund all or a portion of her clients' retainer, failed to send them a billing statement or accounting of their retainer, and failed to return their original documents despite their requests in violation of Rule 1.16(d), MRPC. Her clients obtained a \$2,805 default judgment against her, plus costs and expenses, which she paid and returned the original documents. In relation to the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The clients paid the attorney \$100 for fees and \$2,500 by credit card for her retainer. The attorney only completed some work because her health issues impaired her ability to do so. Her failure to withdraw from representation thereafter violated Rule 1.16(a), MRPC. Her clients had to hire and pay another attorney to complete the matter. Despite their requests, she failed to refund any portion of the retainer until after ODC filed its Complaint in violation of Rule 1.16(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney's license for not less than seven months and ordered her to pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to refund client retainer after representation terminated. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting the facts alleged in the Complaint and that she violated Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. The attorney admitted she violated Rule 1.16, MRPC, by failing to refund the unearned retainer after her client terminated her representation. After a Rule 26 hearing, COP issued its Order on Rule 26 Proceeding, wherein it accepted the attorney's *Conditional Admission* and approved the agreed upon discipline. For this and other misconduct, COP ordered the attorney be publicly admonished by COP, pay \$800 in restitution to her former client, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. *In re Suzanne Marshall*, MT PR 20-0038 (2020).

Failure to return client file as requested. Attorney was hired by two clients to pursue their personal injury matter on a contingency fee basis. After months of no progress or contact, his clients fired him and requested he send them all documents related to their case, which he failed to do. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the attorney failed to file an Answer and default

was entered, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline concluding the attorney violated Rule 1.16(d), MRPC, by failing to return his clients' file as requested, as well as other rule violations. Considering the attorney's disciplinary history as an aggravating factor, COP recommended the attorney be disbarred and ordered to pay costs. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC. *In re David S. Freedman*, MT PR 18-0516 (2019).

Failure to withdraw or resign as Trustee after impairment prevented attorney from fulfilling Trustee duties. Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. Two years later, the attorney left his law firm and Georgia and eventually re-located to Montana where he was also licensed to practice law. He failed to provide the Trust beneficiaries any future contact information or any information regarding the location or balance of the Trust. The beneficiary who was of majority age made several unsuccessful attempts to contact the attorney for three years until she finally located him and requested he pay her college tuition. He informed her he was no longer at his law firm and his life was in upheaval, but he would follow up with her. After he failed to do so, she made multiple unsuccessful attempts to contact him. He finally responded and advised his priority was his family and his wife's ill-health, but he would pay her tuition and for books; he failed to do so. He subsequently advised her he put all Trust assets in stocks and would liquidate them to pay her educational needs; he failed to do so. After he made several unfulfilled promises to pay her tuition and books, she was forced to withdraw from school. After ODC filed its Complaint, for this and other misconduct, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After his mental or familial condition impaired his ability to perform his Trustee duties, he failed to withdraw or resign his position and find an alternate trustee to protect the beneficiaries' interests in violation of Rule 1.16(a), MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted and disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Failure to protect client interests by keeping unearned fees. Attorney was paid a total of \$5,000 to represent his client in his intent to divorce his wife. He filed a Petition for Dissolution on his client's behalf, but she had not yet been served. The client was later charged with misdemeanor Partner Family Member Assault. Almost one year later, the client was charged with Assault with a Weapon or Aggravated Assault in connection with a second altercation with his wife. He was also charged with misdemeanor possession of drug paraphernalia and retained the attorney to represent him, paying him an additional \$3,500. The attorney resolved the misdemeanor case to his client's satisfaction then appeared with his client at his arraignment in his felony case. The day before the omnibus hearing, the Montana Supreme Court indefinitely suspended the attorney for not less than seven months in another disciplinary matter, allowing

him almost two months to wrap up his cases. The dissolution case was dismissed for lack of action – the client’s wife was never served. The client’s wife filed her own dissolution proceedings, and new counsel appeared in that case as well as in the pending criminal case. The attorney acknowledged he owed his client a refund of \$850 in unearned fees. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney failed to take steps to protect his client’s interests by failing to return his unearned fees in violation of Rule 1.16(d). For this and other rule violations, COP recommended the attorney be suspended from practicing law for not less than seven months, pay \$850 in restitution plus interest to his former client, and pay costs of the disciplinary proceedings. The Court accepted and adopted COP’s Findings of Fact, Conclusions of Law and Recommendation in its entirety for violating Rules 1.3, 1.16(d), 3.4(c), and 8.1(b), MRPC. *In re Brian Kohn*, MT PR 17-0234 (2018).

Failure to withdraw from representation after licensed placed on inactive status. Attorney’s law license was placed on inactive status in April 2016 for non-compliance with CLE requirements. While on inactive status, the attorney appeared in court and continued representing his client, despite being notified and discussing his inactive status with the State Bar of Montana, receiving his bar card identifying his license status as inactive, and being confronted by the court and opposing counsel. His failure to withdraw from representing his client after receiving notification his license was inactive violated Rule 1.16(a), MRPC. After ODC filed its Complaint alleging violations of Rules 1.16(a), 5.5, and 8.1(b), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. ODC and the attorney filed a *Joint Disciplinary Recommendation and Affidavit of Consent*. After a hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Montana Supreme Court, which the Court accepted. For violating Rules 1.16(a), 5.5, and 8.1(b), MRPC, the Montana Supreme Court suspended the attorney from the practice of law for three months, placed him on probation for two years upon reinstatement, and ordered him to pay the costs of the disciplinary proceedings. *In re Jack Morris*, MT PR 17-0243 (2018).

Failure to promptly refund unearned fees. Attorney was in private practice for nearly 20 years before she closed her practice, re-located and began working for various state agencies; however, she continued wrapping up some cases over the next few years. Upon leaving private practice, her firm’s IOLTA trust account had a balance over \$30,000. The attorney had not kept proper trust account records; she attempted to construct an accounting, which revealed that nearly \$18,000 was owed to the firm’s former clients. She refunded one former client for an unused retainer. Four years later, she paid the firm \$12,000 for fees earned. Over a decade later, she refunded the remaining clients from the trust account; not all checks were negotiated, leaving a balance of approximately \$4,000. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 1.16(d) by failing to take steps to protect her clients’ interests by returning unearned fees. The Court accepted and adopted COP’s Findings of Fact, Conclusions of Law and Recommendation and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing, be assigned a mentor for five years if she re-enters private practice, disburse the remaining funds owed to clients to the Montana Justice Foundation if unable to locate them, and pay costs of the disciplinary proceedings for violating Rules 1.15(a), 1.15(b), 1.16(d), and 1.18(e), MRPC. *In re Lorraine Schneider*, MT PR 16-0437 (2017).

Failure to withdraw from representation after cognitively impaired. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC. The attorney admitted that while representing a client in a quiet title action, he failed to withdraw from representation when his ability to represent his client was materially impaired after he suffered a traumatic brain injury in violation of Rule 1.16(a), MRPC. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC, the Montana Supreme Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings. *In re Jack Morris*, MT PR 16-0265 (2017).

Improperly charging for copy of client file. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting to facts as alleged in the Complaint and to violating Rule 1.16(d), MRPC. After his client was convicted, he requested a copy of his file to pursue an appeal. The attorney responded that he would provide him a copy of his file for \$250, contrary to Rule 1.16(d). After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order of Discipline, accepting the attorney's *Conditional Admission*, and ordered him to be publicly admonished by the COP, and pay costs of the disciplinary proceedings. *In re Howard Toole*, MT PR 17-0233 (2017).

Failure to protect clients' interests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating 1.16(d) in one case for failing to notify his client he would no longer represent her resulting in her case's dismissal. The attorney admitted violating Rule 1.16(d) in a second case for failing to notify his client of the Court's Order compelling him to correct his discovery deficiencies prior to withdrawing from representation. The client was ultimately ordered to pay his ex-wife's attorney fees and costs in part due to his failure to comply with the Order to Compel. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Montana Supreme Court ordered the attorney be publicly censured by the Court and pay costs of the disciplinary proceedings. *In re David S. Freedman*, MT PR 16-0239 (2016).

Failure to protect client interests; improper termination of representation. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client. He failed to respond to his client's requests for status updates, failed to notify him that he did not intend to pursue his post-conviction relief petition, and misrepresented to his client's brother that he had prepared and filed the petition and would provide proof thereof. The attorney terminated his representation after the filing deadline had passed without consent or notice to his client. He failed to protect his client's interests, failed to advise him of the applicable deadlines and failed to timely return unearned fees. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court suspended the attorney from practicing law for 60 days and ordered him to pay costs of the

disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Failure to refund client retainer upon request. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 1.16(d) in one client matter by failing to refund the client's retainer despite his client's numerous requests. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the Montana Supreme Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation subject to certain conditions. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to return client file. Attorney, practicing immigration law out-of-state, was retained to assist his client in renewing his employment authorization documents. He was paid \$700 to investigate whether the U.S. Government had an existing file concerning his client. The attorney failed to respond to his client's numerous requests for information and for the file after his representation was terminated. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court ordered the attorney be publicly admonished by COP, complete an office practice management course, submit a written plan of management practice and policy changes, refund his former client \$1,250 with interest, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. *In re Eduardo L. Encinas*, MT PR 14-0250 (2015).

Failure to notify and/or deliver client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney failed to promptly deliver settlement funds belonging to his clients or others after fraudulently acquiring the funds when he settled the client matters without their knowledge or consent. In other client matters involving funds acquired through probate of an estate, real estate or business transactions, the attorney failed to notify and deliver the funds to his client or third parties. By this conduct, the attorney violated Rule 1.15, 1.16, 8.4(b), 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent to the Supreme Court, which the Court accepted. For this and other misconduct, the Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d),

MRPC, and ordered him to pay restitution totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Failure to withdraw from representation before engaging in social relationship with client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to violating Rule 1.16(a), MRPC, during her representation of a client in a dissolution matter. After she began representing her client, the client expressed interest in engaging a social relationship with her. After she informed opposing counsel of her intention to engage in a social relationship with her client but before signing and filing a Stipulation for Withdrawal, she and her client began their relationship. The attorney admitted failing to withdraw as counsel of record before entering into a relationship with her client in violation of Rule 1.16(a). After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order, accepting the *Conditional Admission* and ordered the attorney be publicly admonished by COP and pay costs of the disciplinary proceedings. *In re Kendra Anderson*, MT PR 15-0247 (2015).

Failure to withdraw upon discovering imputed conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed and specifically admitted the following. The attorney represented a client who was in negotiations for the purchase of real property from an Estate. Another attorney in the firm represented the seller and Special Administrator of the Estate. The attorney performed work related to his client's proposed purchase of the property after the parties entered into a Buy-Sell Agreement and while new negotiations commenced. The other attorney drafted a contract for deed to conclude the sale between the parties, changes were proposed, a meeting took place and emails were exchanged between the two attorneys of the same firm. The seller, as Special Administrator of the Estate, retained new counsel, who advised the attorney's client the deal was off, and the property was later sold to another purchaser. The attorney's client hired other counsel to file a lawsuit against the Estate and others, asserting breach of contract and fraud claims. The attorney provided and prepared documents to assist new counsel and reviewed the draft complaint before the lawsuit was filed. Two months later, new counsel for the seller and Special Administrator of the Estate filed a Substitution of Counsel in the probate matter to replace the other attorney. The attorney admittedly violated Rule 1.10 for representing the potential buyer when another attorney in the firm represented the seller and Special Administrator of the Estate and violated Rule 1.16 for accepting representation of the potential buyer in relation to the prospective real estate transaction. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Ryan D. Purdy*, MT PR 13-0505 (2014).

Failure to withdraw upon discovering imputed conflict of interest. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed and specifically admitted the following. She was hired to assist her client with the probate of her father's estate. He died intestate and owned two parcels of land in Flathead County. After her client was appointment special administrator of the estate, they discussed the estate's financial problems and the need to sell its assets. Her client, on behalf of the estate and without the

attorney's assistance, began negotiating the sale of one parcel of land to a potential buyer, who was a current client of the law firm where the attorney worked. The two clients entered into a Buy-Sell Agreement. The potential buyer's attorney, a partner in the law firm, performed work related to his client's proposed purchase of the property. Negotiations of the initial terms of the Buy-Sell Agreement failed, and new negotiations commenced for the sale and purchase of both parcels of land. After the new terms were negotiated, the attorney, representing the Special Administrator of the Estate, drafted a proposed contract for deed to conclude the sale. The potential buyer's attorney of the same law firm proposed changes to the contract, and a meeting was held and a series of emails were exchanged between the two attorneys regarding the sale. The seller, as Special Administrator of the Estate, retained new counsel, who advised the potential buyer the deal was off, and the property was later sold to another purchaser. The firm's client hired other counsel to file a lawsuit against the Estate and others, asserting breach of contract and fraud claims. The partner in the firm provided and prepared documents to assist new counsel and reviewed the draft complaint before the lawsuit was filed. Two months later, a Substitution of Counsel was filed in the probate matter, replacing the attorney with new counsel for the Special Administrator. The attorney admittedly violated Rule 1.10 for representing the Special Administrator of the Estate when another attorney in the firm represented the potential buyer to the Estate's property and violated Rule 1.16 for failing to withdraw as counsel for the Special Administrator of the Estate. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's Conditional Admission and Affidavit of Consent and ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Lori B. Miller*, MT PR 13-0506 (2014).

Failure to deliver property/papers belonging to others; failure to protect client's interests.

Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal

representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him. ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 14-0055 and PR 14-0245 (2014).

Failure to protect clients' interest after representation terminated. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC. Specifically, he admitted he was retained to file a lawsuit on behalf of his clients against their real estate agent but failed to act with reasonable diligence and promptness in fulfilling his representation. He did not serve the real estate agent or otherwise pursue the filed complaint in a timely manner, and he failed to make reasonable efforts to expedite his clients' lawsuit consistent with their interests. He failed to return his clients phone calls and respond to their emails. He failed to provide them with periodic invoices for his completed work, pursuant to the fee agreement. After his clients terminated his representation, he filed an attorney's lien claiming fees were due and owing in excess of \$11,000, which was later quashed. He failed to produce his clients' file to their new attorney and did not timely execute the notice of substitution of counsel, causing further delay of their case. He failed to respond to ODC's inquiries concerning his clients' ethics grievance. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC, the Supreme Court ordered the attorney be suspended for 90 days, be publicly admonished by the COP, pay \$2,500 in restitution to his clients, and pay the costs of the disciplinary proceedings. *In re F. Ron Newbury*, MT PR 12-0680 (2014).

Failure to withdraw; failure to protect client interests. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed

to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to provide client file. Attorney, who had previously resigned from the practice of law and was subsequently suspended for an indefinite period of not less than seven months, moved to dismiss the formal complaint for lack of jurisdiction. The Supreme Court denied the motion. The attorney failed to file an Answer to the formal complaint ODC filed against him; therefore, all allegations were deemed admitted. The complaint alleges, during his representation of a defendant in a lawsuit, the attorney failed to file an opening appeal brief after filing a notice of appeal of a summary judgment award to the Supreme Court. Summary judgment had been granted against his client for nearly \$108,000. The attorney failed to respond to the opposing party's motion to dismiss for failure to file an appeal brief, and the appeal was dismissed. He failed to keep his client informed and to respond to his inquiries. He failed to deliver a copy of his client's file to his new counsel, and he failed to respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16, and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel Moss*, MT PR 12-0656 (2013).

Failure to withdraw or notify client of mental health impairment. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an

appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure to return confidential file; failure to promptly withdraw from representation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

Failure to withdraw from representation. Attorney's license to practice law was placed on inactive status with the State Bar of Montana in July 2010 for noncompliance with the Montana Supreme Court's Rules for Continuing Legal Education. He was notified of his placement on inactive status the following day and was prohibited from practicing law. After petitioning the Montana Supreme Court, his law license was placed on active status in December 2010 upon payment of fees. While on inactive status, the attorney represented clients in several court cases. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.16(a), 3.4(c) and 5.5, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 30 days and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety. *In re Clinton H. Kammerer*, MT PR 11-0317 (2012).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained to assist a client regarding her wrongful

termination and other employment-related matters. The complaint alleged the attorney failed to act diligently in advancing the client's claim prior to filing the lawsuit, frequently failed to respond to the client's communications, attempted to limit the scope of his representation without his client's informed consent, failed to have a written contingency fee agreement outlining the scope of his representation and the basis or rate of his fees and expenses for which she would be responsible, and failed to properly withdraw from the representation. The formal complaint alleged violations of Rules 1.2, 1.3, 1.4, 1.5(b) and (c), and 1.16(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and to pay the costs of the disciplinary proceedings. *In re Gregory W. Duncan*, MT PR-11-0617 (2012).

Improper withdrawal from representation. (Reciprocal Discipline) The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a

default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. The attorney admitted to struggles with depression and alcoholism and she should have referred her client to other counsel. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 12-0196 (2012).

Failure to properly withdraw from representation. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re F. Ron Newbury*, MT PR 10-0617 (2012).

Failure to properly withdraw from representation. Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the

divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Failure to properly withdraw from representation. Attorney was disciplined for his conduct relating to two separate matters. In the first matter, the attorney was hired to assist a client in a wrongful death claim arising out of North Dakota. The attorney arranged for a North Dakota law firm to handle the matter and requested his client pay him \$3,700 to be used for litigation costs incurred by the North Dakota firm, which the client paid. The client subsequently hired the attorney to defend him in a lawsuit filed against him for money allegedly owed to the plaintiffs. The attorney appeared on his client's behalf, but there was no evidence that he took any further action in the matter. After the client terminated the attorney's representation in both cases, he, as well as his new attorney, requested his files, original documents, and a refund of the remaining funds deposited into the attorney's trust account. More than four months later, the attorney transferred the remainder of the funds in the amount of \$2,200 to his former client's new attorney, but he never provided an accounting of the money. The attorney failed to pay the North Dakota firm for expenses invoiced to his client relating to the wrongful death lawsuit. He recalled paying an expert witness fee of \$1,500 from his trust account, which led him to the \$2,200 refund; however, he had no record to evidence the payment. In the second matter, the attorney was hired to defend a client who was charged with felony Driving Under the Influence (DUI). The attorney filed a Motion to Suppress or Dismiss the charge but failed to timely file a brief in support of the motion even after requesting an extension to do so. As a result, the district court denied his Motion. He failed to inform his client of the reasons the Motion was denied. His client ultimately learned of the denial after receiving notice from the court. His client later learned that the Motion was denied because his brief was untimely filed. The attorney filed a questionable Petition for Writ of Supervisory Control with the Montana Supreme Court. He told his client to plead guilty to felony DUI because he could not win the case, but after retaining new counsel, the client pled guilty to a lesser offense. The ODC filed a formal complaint alleging the attorney violated the Rules of Professional Conduct in three separate matters; however, the COP determined that clear and convincing evidence only existed to prove violations in two of the

matters. In the first matter, ODC alleged the attorney failed to keep his client reasonably informed about the status of his matters and did not respond to his client's reasonable requests for information in violation of Rule 1.4. After termination of his representation, the attorney failed to timely deliver funds, files, and documents to his client or his client's new attorney in violation of Rule 1.16(d). In the second matter, ODC alleged he failed to provide his client with competent representation regarding the DUI charges filed against his client in violation of Rule 1.1, and he failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 1.16(d), MRPC. The COP recommended the attorney be publicly censured by the Supreme Court and be assessed the costs of the proceedings for his violation of his ethical duties. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to appear before the Court for a public censure and to pay the costs of the disciplinary proceedings. *In re Solomon S. Neuhardt*, MT PR 09-0621 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained to handle a bankruptcy for his clients, who paid him a \$1,800 flat fee. The attorney deposited the money into his operating account and not into his trust account; he took the fee before it was earned. The attorney failed to communicate the fee arrangement and the scope of his representation to his clients in writing. The attorney failed to file a bankruptcy petition for his clients. He accepted the representation despite his large caseload. The formal complaint alleges violations of Rules 1.3, 1.5, 1.15, 1.16(a) and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure, to be placed on probation for two years, and to pay costs of the disciplinary proceedings. *In re Stephen R. McCue*, MT PR 09-0611 (2010).

Failure to return entire client file with an accounting after termination; failure to refund unearned fees. Attorney was retained to evaluate potential claims against an electrical

contractor. The client paid a \$500 retainer. The issue with the contractor resolved, and the client terminated the attorney-client relationship. He requested the return of his file and a refund of his retainer; he subsequently requested an accounting of the fee. The attorney did not respond. The attorney failed to respond to the informal complaint filed against her with the ODC, despite ODC's requests for response. The attorney failed to notify opposing counsel of her suspension from the practice of law ordered by the Montana Supreme Court and failed to file an affidavit attesting to her compliance with the Court's disciplinary order. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney did not appear. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.16(d), 3.4, and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and disbarred the attorney from the practice of law in Montana and ordered her to pay the costs of the disciplinary proceedings. *In re Marla J. Drozd*, MT PR 09-0383 (2010).

Failure to return client file and provide accounting of retainer. Attorney was retained to represent a client regarding a personal injury claim; the client paid him a \$6,000 retainer. Three years later, the District Court issued an Order to Show Cause Why Case Should Not Be Dismissed. After the Clerk of Court sent a copy of the Order to the attorney's office, it was returned as non-deliverable. The attorney failed to notify the Court of his change of address. The Court subsequently dismissed the action for failure to prosecute. The dismissal order was sent to the attorney at the same address and was not returned. The attorney later contacted opposing counsel and at that time learned of the Order of dismissal. He advised that he would be filing a motion to reinstate the action. Two years later, he filed the motion. A hearing was held, and the Court denied the Motion to Reinstate Claim. The attorney filed a Notice of Appeal, which was dismissed because he did not timely file an opening brief. The client requested the original or a copy of the file; the attorney failed to comply and failed to account for the retainer the client paid him. The attorney failed to respond to the informal complaint filed against him with the ODC despite ODC's two requests for a response. In a second matter, the attorney also failed to respond to ODC's two requests for a response. The attorney failed to file an Answer to the formal complaint ODC filed against him. A default hearing was held before the COP, and the attorney appeared at the hearing. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for 30 days and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re R. Allen Beck*, MT PR 09-0227 (2009).

Failure to comply with requirements regarding terminating representation. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of

the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to protect client interests. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Failure to return fees. Attorney was retained by two clients to represent them in their dissolution matters. The first client paid the attorney a \$400 retainer, plus \$190 for filing fees and despite numerous attempts to contact the attorney, never heard from him again. The second client paid the attorney \$1,250, and the attorney filed the Petition for Dissolution and served the respondent. After the respondent returned the Acknowledgment of Service form, the attorney failed to file it with the Court. He abandoned his client, failed to communicate with her despite her numerous attempts to contact him, and failed to protect her interests, including, but not

limited to, returning his unearned fees. The attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d) and 8.1(b), MRPC. The Court extended the attorney's existing suspension for two additional years and ordered him to pay the costs of the disciplinary proceedings. Any reinstatement is conditioned on his refund of \$400 to the first client and \$1,000 to the second client. *In re J. Stuart Bradshaw*, MT PR 06-0419 (2007).

Failure to properly withdraw. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees. The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0519 (2007).

Failure to properly withdraw from representation. The allegations in the Formal Complaint included the following. Attorney was retained by her clients to represent them regarding a Petition for Grandparent Visitation Plan filed by their children's maternal grandparents. The parties attended a settlement conference, at which a tentative settlement was reached. Opposing counsel sent a draft of the grandparent/grandchild contact plan to the attorney. The attorney's

clients advised the attorney they wanted certain changes made to the plan. Until the clients terminated the attorney's services, the attorney failed to communicate with them despite their numerous attempts. The attorney also failed to respond to opposing counsel's inquiries regarding his proposed contact plan. The settlement master filed two status reports, wherein he recommended the Court approve opposing counsel's draft of the proposed contact plan. Opposing counsel moved the court to adopt the proposed plan and the settlement master's recommendations. In the meantime, the opposing party contacted the attorney's clients and informed them that it did not appear they were receiving information that opposing counsel had been sending to their attorney. The opposing party suggested they draft their own proposed final plan and submit it to opposing counsel. Opposing counsel wrote the attorney, indicating that the parties had reached an agreement as to the language and terms of the plan. Opposing counsel enclosed a proposed final draft and requested the attorney submit it to her clients for their signatures and return it to him. The attorney did not forward the letter or draft to her clients. The parties signed a new proposed plan; however, the court issued its Findings of Fact, Conclusions of Law, Judgment and Order Implementing Grandparent/Grandchild Contact Plan, which did not encompass the agreed upon changes. The clients filed a motion with the court to terminate their attorney, which was granted. The clients also filed a *pro se* Motion to Modify the Court's Order, which the court denied. The attorney had been suffering from significant health problems. She failed to withdraw from representing her clients when her physical condition materially impaired her ability to represent them. According to the Montana Supreme Court's Order, in the attorney's *Conditional Admission and Affidavit of Consent* submitted to the COP, she acknowledged that her acts or omissions during her representation of clients violated Rules 1.1, 1.3, 1.4, 1.16(a)(2) and (c), MRPC. The COP recommended to the Montana Supreme Court that her tendered admission be accepted. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for five years and payment of costs of the disciplinary proceedings. The Court further ordered that during probation, the attorney shall not engage in the private practice of law unless she is under the direct supervision of another attorney. *In re Ferguson*, MT PR 06-0701 (2007).

Failure to return fees. The attorney was retained by three clients to pursue family law matters. The first client hired the attorney to represent him in a child support proceeding and to complete a parenting plan. The second client hired the attorney to represent her in dissolution of her marriage. The third client hired the attorney to pursue an action for the dissolution of his marriage. In these matters, the attorney failed to keep the client informed of the status of the matters, failed to respond to inquiries, failed to act with reasonable diligence, failed to complete the work for which the attorney was retained, and, upon termination, failed to return any unearned fee. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 1.5, and 1.16(d). The Court ordered the attorney indefinitely suspended for not less than one year and ordered the attorney to pay the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0157 (2006).

Failure to forward client materials. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer

represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Musick*, MT 05-607 (2006).

Failure to return client's file. The attorney failed to respond to the complaint filed against him with the Office of Disciplinary Counsel (ODC) despite two requests for a response. The Commission on Practice ordered the attorney to appear and show cause why discipline should not be imposed. The attorney failed to appear at the show cause hearing as well. Further, the attorney failed to return a client's file despite the client's request and an order from the district court. The Montana Supreme Court found that the attorney failed to respond to disciplinary inquiries, failed to appear to show cause, and failed to return a client's file despite a court order. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.16(d), 3.4(c), and 8.1(b). The Court ordered the attorney be indefinitely suspended from the practice of law for not less than one year and be assessed with the costs of the disciplinary proceedings. *In re Moses*, MT 04-873 (2006).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Reinstatement. Attorney was suspended from the practice of law in Montana for violations of Rules 1.16, 8.4(c)–(d) and 3.3(a)(1), MRPC, in 1988. The Montana Supreme Court denied the attorney's petition for reinstatement the following year, finding he was less than candid about efforts to take the bar in other states and he continued to deny wrongdoing in one of the matters for which he was suspended. During his suspension, the attorney did not practice law in Montana. The COP submitted its recommendations and stated it believed a sufficient amount of

time had passed for the attorney to understand the importance of absolute candor. The attorney no longer denied his violation. The Montana Supreme Court accepted the COP's recommendations and reinstated the attorney to the practice of law in Montana. He was ordered to complete thirty hours of Continuing Legal Education and pay the costs of disciplinary proceedings. *In re Ziskind*, MT 87-416 (2005).

Failure to respond to requests for client's file. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting several violations, including violation of Rule 1.16(d), MRPC. The Montana Supreme Court accepted the attorney's admission and publicly censured him. He was also ordered to pay COP and ODC's costs of proceedings. *In re Seel*, MT 05-527 (2005).

Failure to promptly withdraw (Reciprocal discipline). Attorney was disciplined by the Ethics and Discipline Committee of the Utah Supreme Court which provided ODC with copies of the relevant documents. The attorney was hired by the client to represent her in a real estate contract dispute. He failed to promptly withdraw from representation when the client requested him to do so. The attorney was publicly reprimanded in Utah. Subsequently, the Montana Supreme Court ordered imposition of identical discipline and publicly censured the attorney for violations of several rules, including Rule 1.16(d), MRPC. *In re Musick*, MT 05-558 (2005).

Unjustified retention of fees following termination. Attorney was hired to represent a Florida man in a paternity and child support matter. The client underwent DNA testing at the request of the attorney and the state Child Support Enforcement Division that showed he was not the father of the child for whom he was paying support. The attorney thereafter failed to take action on behalf of his client. No court proceedings were undertaken, though the attorney represented to his client that he had spoken to a district judge about the matter and the court had determined the client was not the father of the child. Eventually, the client learned from the court clerk that no proceedings had been filed and demanded the return of his retainer. No fees were ever returned. The Commission on Practice found the attorney was not justified in retaining the fees and that such conduct violated Rule 1.16, MRPC. The Montana Supreme Court upheld the Commission's findings and suspended the attorney for an indefinite period of not less than seven months. The Court also ordered the attorney to refund the retainer paid by the client. *In re Lape*, MT 99-681 (2001).

Retaining fees after termination/retaining fees not earned or justified. Attorney found to have violated Rule 1.16(d), MRPC, on six unrelated occasions when she retained unearned fees paid in advance by clients. The attorney—who was indefinitely suspended at the time-- was disbarred for these and numerous other violations, which the Montana Supreme Court described as an unparalleled “pattern of unethical conduct, disregard for the interests of her clients and others, and disdain for the fundamental precepts of honesty and trust, all of which render her patently undeserving of the privilege of being a member of the bar.” *In re Sapp-LeClaire*, MT 97-608 (1998).

Failure to withdraw after discovery of conflict of interest. Attorney appeared in 1987 on behalf of a party in a domestic relations proceeding. After his initial appearance in that matter, he took no further action, but remained listed as the counsel of record. In 1991, the attorney agreed to represent another client in the same matter. The attorney claimed to have no recollection of

representing the first client. After the conflict was discovered, the attorney still appeared at a hearing on behalf of his second client. The Commission on Practice found a violation of Rule 1.16, MRPC, because of his failure to withdraw after being alerted to the conflict. The Montana Supreme Court adopted the findings of the Commission and suspended the attorney for not less than one year for this and other violations of the rules of conduct. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney's petition for reinstatement.)

RULE 1.17: GOVERNMENT EMPLOYMENT

An attorney employed full time by the State of Montana or a political subdivision shall not accept other employment during the course of which it would be possible to use or otherwise rely on information obtained by reason of government employment that is injurious, confidential or privileged and not otherwise discoverable.

(No annotations are available relating to violations of Rule 1.17, MRPC.)

RULE 1.18: INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA) PROGRAM

(a) Purpose. The purpose of the Interest on Lawyer Trust Accounts (IOLTA) program is to provide funds for the Montana Justice Foundation to pay the reasonable costs of administering the program and to make grants to entities with missions within the following general categories:

- (1) Providing legal services, through both paid staff program(s) and pro bono program(s), to Montana's low income citizens who would otherwise be unable to obtain legal assistance;
- (2) promoting a knowledge and awareness of the law; and
- (3) improving the administration of justice.

(b) Required participation. IOLTA program participation is mandatory, except as provided in subsection (d), below. Every non-exempt lawyer admitted to practice in Montana, and/or every law firm composed of any such lawyers, which receives client funds, shall establish and maintain an interest-bearing trust account for pooled client funds, termed an "IOLTA Trust Account." Each lawyer/firm shall also establish separate interest-bearing trust accounts for individual clients, termed "Client Trust Accounts," when appropriate pursuant to this Rule.

(c) Administration.

(1) Deposits of clients' funds.

(A) All client funds paid to a lawyer/firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable interest-bearing trust accounts (Trust Accounts) in the State of Montana. No funds belonging to the lawyer/firm shall be deposited into a Trust Account except:

- (i) funds reasonably sufficient to pay account charges not offset by interest;
- (ii) an amount to meet a minimum balance requirement for the waiver of service charges; and/or
- (iii) funds belonging in part to a client and in part presently or potentially to the lawyer/firm, but the portion belonging to the lawyer/firm shall be withdrawn when due unless the right of the lawyer/firm to such funds is disputed by the client, in which event the disputed portion shall remain in the account until the dispute is resolved.

(B) The lawyer/firm shall comply with all Rules relating to preserving the identity of clients' funds and property.

(C) Every Trust Account shall be established with a federally-insured and state or federally regulated financial institution authorized by federal or state law to do business in Montana. Funds in each Trust Account shall be subject to immediate withdrawal.

(D) The interest rate payable on a Trust Account shall not be less than the rate paid to non-lawyer depositors. Higher rates offered for deposits meeting certain criteria, such as certificates of deposit, may be obtained on Trust Account funds if immediate withdrawal is available.

(E) Every Trust Account shall bear the name of the lawyer/firm and be clearly designated as either an IOLTA Trust Account or a Client Trust Account established under this Rule.

(2) IOLTA Trust Accounts. Every IOLTA Trust Account shall comply with the following provisions:

(A) The lawyer/firm shall maintain all client funds that are either nominal in amount or to be held for a short period of time in an IOLTA Trust Account.

(B) No client may elect whether his/her funds should be deposited in an IOLTA Trust Account, receive interest or dividends earned on funds in an IOLTA Trust Account, or compel a lawyer/firm to invest funds that are nominal in amount or to be held for a short period of time in a Client Trust Account.

(C) The determination of whether a client's funds are nominal in amount or to be held for a short period of time rests solely in the sound judgment of each lawyer/firm. No charge of professional misconduct or ethical impropriety shall result from a lawyer's exercise of good faith judgment in that regard.

(D) To determine if a client's funds should be deposited in an IOLTA Trust Account, a lawyer/firm may be guided by considering:

(i) the amount of interest the funds would earn during the period they are expected to be deposited;

(ii) the costs of establishing and administering the account, including the lawyer's/firm's fees, accounting fees and tax reporting requirements;

(iii) the amount of funds involved, the period of time they are expected to be held and the financial institution's minimum balance requirements and service charges;

(iv) the financial institution's ability to calculate and pay interest to individual clients; and

(v) the likelihood of delay in the relevant transaction or proceeding.

(E) The lawyer/firm shall require the financial institution in which the IOLTA Trust Account is established to:

(i) remit to the Montana Justice Foundation, at least quarterly, all interest or dividends on the average monthly balance in the IOLTA Trust Account, or as otherwise computed according to the institution's standard accounting practices, less reasonable service fees, if any;

(ii) with each remittance, provide the Montana Justice Foundation and the lawyer/firm with a statement showing for which lawyer/firm the remittance is sent, the period covered, the rate of interest applied, the total amount of interest earned, any service fees assessed against the account and the net amount of interest remitted;

(iii) charge no fees against an IOLTA Trust Account greater than fees charged to non-lawyer depositors for similar accounts, or which are otherwise unreasonable; and

(iv) collect no fees from the principal deposited in the IOLTA Trust Account.

(F) Annually the Montana Justice Foundation shall make available a list of all financial institutions offering IOLTA accounts and meeting this Rule's IOLTA depository qualifying requirements. Lawyers/firms shall be entitled to rely on the most recently published list for purposes of IOLTA Rule compliance. The Montana Justice Foundation shall pay all service charges incurred in operating an IOLTA Trust Account from IOLTA funds, to the extent the charges exceed those incurred in operating non-interest-bearing checking accounts at the same financial institution.

(G) Confidentiality. The Montana Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this Rule.

(3) Non-IOLTA client Trust Accounts. All client funds shall be deposited in an IOLTA Trust Account, unless they are deposited in a separate interest-bearing account for a particular client's matter with the net interest paid to the client. Such interest must be held in trust as the property of the client as provided in this Rule for the principal funds of the client.

(d) A lawyer/firm is exempt from this Rule's requirements if:

(1) the nature of their practice is such that no client funds are ever received requiring a Trust Account;

(2) the lawyer practices law in another jurisdiction and not in Montana;

(3) the lawyer is a full-time judge, or government, military or inactive lawyer; or

(4) the Montana Justice Foundation's Board of Directors, on its own motion, exempts the lawyer/firm from participation in the program for a period of no more than two years when:

(A) service charges on the lawyer's/firm's Trust Account equal or exceed any interest generated; or

(B) no financial institution in the county where the lawyer/firm does business will accept IOLTA accounts.

(e) Unclaimed or unidentifiable trust account funds. Disposition of unclaimed or unidentifiable IOLTA or non-IOLTA trust account funds shall be handled in accordance with Rule 1.15(d).

(f) Lawyer filings and records.

(1) Filings. Each lawyer/firm shall file an annual certificate of compliance with or exemption from this Rule with the Montana Justice Foundation. The certification must include the name of the lawyer/firm listed on the account, the account number, and the financial institution name and address. The certification may be made in conjunction with the annual dues billing process. Failure to provide the certification may result in suspension from the practice of law in this state until the lawyer complies with the requirements of this Rule. Such suspension will be effected pursuant to the Rules of the State Bar of Montana governing a lawyer's failure to pay dues and assessments.

(2) Records. Lawyer trust accounts shall be maintained as prescribed by the Montana Supreme Court in the "Trust Account Maintenance and Audit Requirements" (adopted February 27, 1989).

(g) Implementation. Implementation will be effected through this Rule and the Rules of the State Bar of Montana, all as amended and approved by the Montana Supreme Court.

Failure to keep and maintain client ledger. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint, acknowledging he could not successfully defend himself against the facts and allegations in Counts One, Three and Four and admitting he violated Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. The attorney was retained to defend his client in a breach of contract lawsuit filed against her by her former realtor regarding a broker's fee dispute. The agreement to defend her was made with her insurance carrier, which would pay his legal fees to defend her, and she would pay his fees for her counterclaim against the realtor. He agreed to take 20% of any counterclaim recovery not to exceed \$8,000. His client ultimately paid him an \$8,000 retainer. The attorney failed to accurately maintain his client's client ledger for the retainer fee he received for pursuing her counterclaim in violation of Rule 1.18, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. *In re Bruce M. Jacobs*, MT PR 20-0271 (2020).

Failure to properly maintain IOLTA trust account records of client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts as alleged in the Complaint and to violations of the MRPC. The attorney was retained and paid \$1,500 to represent her client regarding parenting disputes. The attorney admitted she failed to keep appropriate IOLTA trust account records of client funds in accordance with the Trust Account Maintenance and Audit Requirements in violation of Rules 1.15 and 1.18, MRPC. After a Rule 26 hearing, COP issued its Order on Rule 26 Conditional Admission, wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent*. For this and other misconduct, COP ordered the attorney be publicly admonished by COP in writing, be placed on probation for two years with the condition, and pay costs of the disciplinary proceedings for violating Rules 1.5, 1.15, and 1.18, MRPC. *In re Millicent Anne Leatzow*, MT PR 19-0625 (2020).

Failure to deposit or maintain client funds in IOLTA trust account; failure to maintain or keep records of client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. In the first matter, the attorney was hired to assist his clients with settling their insurance claims after a motor vehicle accident. He settled one client's claim for \$3,425 "new money," deposited the check into his IOLTA trust account, wrote himself a check for \$1,425, and paid the remaining \$2,000 to his client by cashier's check because he did not have sufficient funds in his trust account in violation of Rules 1.15 and 1.18. He subsequently settled the other client's claim for \$5,000 "new money," deposited the check into his IOLTA trust account, transferred it to his personal bank account, immediately withdrew it all on the same day in violation of Rules 1.15 and 1.18, MRPC. One month later, he paid his client \$2,765 by check from his personal bank account in violation of Rules 1.15 and 1.18, MRPC. The attorney received \$124.95 from the insurance company as medical expense reimbursement for his client, which he deposited into his IOLTA, transferred to his personal bank account, and withdrew the funds in violation of Rules 1.15 and 1.18, MRPC. He failed to keep and maintain a record of the settlement distribution or client ledger for either client's settlement funds in violation of Rules 1.15 and 1.18, MRPC. In the second matter, the attorney was retained and paid \$2,000 to assist his new client with a civil rights issue but failed to complete any legal services. After his client requested a retainer refund, the attorney advised ODC he intended to refund \$1,500 of the retainer but failed to do so. The attorney did not safekeep and maintain his client's retainer in his IOLTA trust account, did not keep his client's funds separate from his own funds, and used his client's funds for his own purposes before they were earned Rules 1.15 and 1.18, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than one year and ordered him to pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to deposit and maintain retainers in IOLTA trust account until earned. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the first matter, the attorney was retained by her clients to assist with their estate planning. They paid a \$2,700 retainer and gave her pertinent and necessary information to begin. She did not deposit the retainer into her IOLTA trust account in violation of Rules 1.15 and 1.18, MRPC, and failed to complete the work. In the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The clients made an initial \$100 payment for filing fees and later paid the attorney \$2,500 by credit card for her retainer. She did not deposit any of the funds into her IOLTA trust account in violation of Rules 1.15 and 1.18, MRPC, and failed to complete the work. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and

adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered her to pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to properly maintain IOLTA trust account funds; failure to deposit client funds into IOLTA trust account. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts of the Complaint and multiple violations of the MRPC as outlined. The attorney overdrew her IOLTA trust account when her client tried negotiating her \$521 retainer refund check then co-mingled her operating account funds with her IOLTA trust account funds in violation of Rules 1.15 and 1.18, MRPC. She failed to hold sufficient funds in her IOLTA trust account and misappropriated funds belonging to her client using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She misappropriated \$34,200 from her IOLTA trust account over a two-year period by withdrawing clients' funds prior to earning them and using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. The attorney co-mingled approximately \$31,000 of her personal or business funds by depositing them into her IOLTA trust account to replace misappropriated client funds in violation of Rules 1.15 and 1.18, MRPC. She began depositing all client retainers into the firm's business account before the funds were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. After another client authorized her to charge her credit card monthly to apply toward her bill, the attorney charged her card multiple times exceeding the agreed upon payment plan by \$6,800, without her client's authorization. The funds were deposited into the firm's IOLTA, and she used for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. The attorney was paid a \$3,500 retainer by a third client's mother-in-law via Square, which she deposited into her IOLTA trust account. Her client then authorized her to charge her credit card monthly to apply toward her bill, but the attorney charged some months in excess of the agreed upon payment plan without authorization. The funds were deposited into her IOLTA, and the attorney used them for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court, which the Court accepted and adopted. The Court disbarred the attorney, ordered her to pay \$11,284 in restitution to one third party with 10% interest and \$54,218 to another third party with interest at the rate charged by her credit card company, and to pay costs of the disciplinary proceeding for violating Rules 1.15, 1.18, and 8.4(c), MRPC. *In re Tara Rose-Miller*, MT PR 19-0634 (2020).

Failure to properly maintain trust account funds and records. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. He executed promissory notes from himself or his construction company to some current or former clients. The attorney deposited \$1.2 million of the funds into various personal or business accounts he owned; at least \$125,000 was deposited into his firm's IOLTA trust account. He used the funds to pay himself, family

members, personal or business obligations, or to pay other clients and individuals their interest payments, most of which came from his IOLTA trust account, in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. After repaying some notes, he still owed \$1,069,970.83 to clients and others. He did not keep a ledger of his client's funds or maintain the property separate from his own in violation of Rules 1.15 and 1.18, MRPC. After ODC filed its Complaint alleging violations of Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Supreme Court, which the Court accepted and adopted and disbarred the attorney, ordered him to pay full restitution totaling \$1,069,970.83 plus interest and to pay costs of the disciplinary proceedings for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Failure to keep client funds separate and maintain client funds in trust account. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting he violated Rules 1.4, 1.15, and 1.18, MRPC. The attorney admitted he was retained to represent a client in a criminal felony drug case and a related civil forfeiture matter concerning \$10,318 in cash seized at the time of his arrest. The attorney successfully argued both cases be dismissed and admitted he retrieved his client's seized funds while his client remained incarcerated for probation violations and deposited the funds into his IOLTA trust account. The attorney further admitted that during the time he held his client's funds in his trust account, his trust account balance periodically dropped below the \$10,318 that should have remained in the account until he returned the funds to his client. The attorney admitted violating Rules 1.15(a) and 1.18, MRPC, when he failed to keep his client's funds separate from his office trust account and failed to continuously maintain a minimum balance of \$10,318 in his trust account during the period between his receipt and disbursement of his client's funds. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For violating Rules 1.4, 1.15, and 1.18, MRPC, the Court ordered the attorney be publicly censured pay the costs of the disciplinary proceedings. *In re Josh Van de Wetering*, MT PR 17-0253 (2018).

Mishandling and misappropriating client funds; failure to hold clients' property separate from attorney's property; failure to properly maintain IOLTA trust account. Attorney disbursed all or part of his attorney fees and out-of-pocket expenses incurred in certain cases from his IOLTA trust account to himself or others prior to receipt of the anticipated settlement funds, totaling approximately \$89,000. To cover these disbursements, he used funds belonging to others or his own earned fees from settled cases that he had not previously timely disbursed. He improperly transferred nearly \$180,000 to which he was not entitled from his IOLTA to his operating account. He eventually restored nearly \$157,000 of the improperly transferred funds by leaving over \$115,000 of his own funds in the trust account and transferring \$41,250 from his operating account. He used funds in the trust account belonging to others to cover the remainder. The attorney failed to give several clients all funds owed and belonging to them, totaling approximately \$4,800. He left approximately \$8,300 in the IOLTA, which he used for his own purposes without a proper accounting. He failed to maintain his IOLTA account in accordance with the Trust Account Maintenance and Audit Requirements, including failing to keep client

ledgers. He failed to hold unearned retainer funds in his IOLTA until earned. The attorney admitted all material facts alleged in the Complaint, his misconduct, and his violations of the MRPC. All clients eventually received funds owed to them. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court concluding the attorney's use of funds belonging to his clients and/or others constitutes misappropriation and mishandling of funds in violation of Rules 1.15, 1.18 and 8.4(c), MRPC; his failure to maintain his IOLTA in accordance with the Trust Account Maintenance and Audit Requirements violated Rule 1.18(e)(2), MRPC; and taking fees before they were earned violated Rules 1.15 and 1.18, MRPC. The Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings, including the \$30,000 to ODC for violating Rules 1.15, 1.18, and 8.4(c), MRPC. If reinstated, he must provide CPA-reviewed accounting of his trust account for 10 years. *In re Lucas Foust*, MT PR 16-0301 (2017).

Failing to hold client funds separate from attorney's funds; failure to deposit client retainer into IOLTA trust account. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting several violations of the MRPC in relation to two separate matters. He admitted violating Rules 1.15 and 1.18, MRPC, by failing to hold funds belonging to his client separate from his own property when he failed to deposit retainers into an IOLTA trust account because he did not have one. For this and other misconduct, the attorney admitted violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be publicly censured by the Court, be placed on probation for two years subject to certain terms and conditions, and ordered him to pay costs of the disciplinary proceedings. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to properly maintain IOLTA. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, wherein he admitted he failed to maintain his IOLTA in accordance with the Trust Account Maintenance and Audit Requirements in violation of Rule 1.18, MRPC. After a Rule 26 hearing, COP accepted the attorney's *Conditional Admission and Affidavit of Consent* and issued its Order of Discipline. For violating Rule 1.18 for this conduct and Rule 1.15 for other misconduct, COP ordered the attorney receive a written public admonition from COP and pay the costs of the disciplinary proceedings. *In re James J. Srenar*, MT PR 17-0260 (2017).

Failure to maintain IOLTA account per Trust Account Maintenance Requirements. Attorney was in private practice for nearly 20 years before she closed her practice, re-located and began working for various state agencies; however, she continued wrapping up some cases over the next few years. Upon leaving private practice, her firm's IOLTA trust account had a balance over \$30,000. The attorney had not kept proper trust account records and attempted to construct an accounting, which revealed that nearly \$18,000 was owed to the firm's former clients. She refunded one former client for an unused retainer. Four years later, she paid the firm \$12,000 for fees earned. Over a decade later, she refunded the remaining clients from the trust account; not all checks were negotiated, leaving a balance of approximately \$4,000. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme

Court concluding the attorney violated Rule 1.18(e)(2) by failing to maintain an IOLTA account in accordance with the Trust Account Maintenance and Audit Requirements. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing, be assigned a mentor for five years if she re-enters private practice, disburse the remaining funds owed to clients to the Montana Justice Foundation if unable to locate them, and pay costs of the disciplinary proceedings for violating Rules 1.15(a), 1.15(b), 1.16(d), and 1.18(e), MRPC. *In re Lorraine Schneider*, MT PR 16-0437 (2017).

Failure to maintain an IOLTA trust account; failure to deposit client funds into IOLTA; failure to keep record of client funds. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.5(b), 1.15(a), 1.18 and 1.18(e), MRPC, during his representations of a husband and wife in a related matter. He was retained to represent the wife during a federal criminal investigation and paid \$2,500. After representation of the wife ended, the husband paid the attorney \$5,000 to represent him during the same federal criminal investigation. The attorney admitted he failed to deposit either retainer into an IOLTA trust account until earned, failed to keep or maintain an IOLTA trust account, failed to comply with IOLTA reporting requirements, and failed to keep complete records of the client funds in violation of Rule 1.18, MRPC. After a Rule 26 hearing, the COP issued its Findings of Fact, Conclusions of Law and Order, concluding, for this and other misconduct, the attorney violated Rules 1.5(b), 1.15(a), 1.18 and 1.18(e), MRPC, and ordered him to receive a public admonition by COP and pay costs of the disciplinary proceedings. *In re Paul G. Matt*, MT PR 15-0654 (2016).

Mishandling client funds. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. According to the uncontested report of the referee adopted by the Court, the attorney made misrepresentations to his client, mishandled his client's cost funds by applying them to his attorney's fees, deliberately failed to finish his client's matter, and failed to properly and adequately communicate and address issues with his client. He specifically failed to correct or address billing issues, consciously chose not to file a corrected amended judgment for his client unless and until he received all fees from the client, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client's permission, failed to address issues related to his failure to retain services of a court reporter for trial as directed by his client, and failed to submit a corrected amended judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana's Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Misappropriation and theft of client or other funds; failure to maintain trust account records. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal

complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients and to violating Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney failed to promptly deliver settlement funds belonging to his clients or others and failed to keep those funds separate from his own after fraudulently acquiring the funds when he settled the client matters without their knowledge or consent. He further failed to inform his clients or third parties to whom the funds belonged of the settlement, lied to some about receiving the funds, forged signatures, and stole and misappropriated their funds for his own purposes. He likewise stole and misappropriated funds from other clients received through probate proceedings or real estate or business transactions and lied to the clients or third parties about the amount of funds owed to them. He failed to keep or maintain his IOLTA trust account records in accordance with the Trust Account Maintenance and Requirement Rules. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent, which the Court accepted. For this and other misconduct, the Montana Supreme Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Misappropriating and mishandling client and third party funds; failure to promptly deliver client and/or third party funds; failing to maintain trust account records. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. The insurer wired the funds to the attorney's IOLTA trust account in October 2008. He did not immediately distribute settlement funds to the heirs or to himself for his fees. By the end of June 2010, the attorney's trust account balance was \$10.47. Between October 2008 and March 2010, the attorney paid himself \$183,100; however, he was only entitled to \$120,000 in attorney fees. During that time, he disbursed approximately \$51,000 to his client or others on her behalf, \$32,000 to his client's non-attorney advocate, and \$32,524 to others for litigation expenses. No funds were disbursed to the other heirs. The attorney thereafter paid himself and his client, or others on her behalf, additional funds in the IOLTA trust account using funds belonging to others. At a hearing in the state probate case in February 2013, the attorney misrepresented to the Court he was holding the settlement proceeds totaling \$110,000 in a separate trust account and had made some disbursements, including attorney fees and costs. He did not comply with the Court's order to submit an accounting of all settlement funds. In January 2014, he provided the personal representative a list of his IOLTA trust account checks paid to his client between October 2008 and July 2013 totaling approximately \$55,000. He failed to promptly deliver funds to the heirs, failed to hold property belonging to his client and/or others separate from his own, used funds belonging to himself or others to cover the monies paid to his client, and misappropriated and mishandled a substantial portion of the settlement proceeds in violation of Rules 1.15, 1.18 and

8.4(c), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC, for this and other misconduct. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations, with the exception of disgorgement of fees and the amount of restitution, and disbarred the attorney, ordered him to pay restitution to the heirs totaling \$65,547.10, and pay costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Misappropriation and mishandling client funds; failure to promptly deliver client funds.

Attorney filed a lawsuit on his client's behalf regarding a personal injury claim. He settled the case for \$12,173.18 new money, and the insurer sent him check for that amount. He deposited the money into his trust account almost 16 months later and immediately wrote himself a check for fees and costs totaling \$937; however, he did not disburse any funds to his client. Within two months, he had withdrawn all of the settlement funds, using them for his own purposes. The client had made numerous inquiries about the status of the settlement proceeds. After the attorney received his client's grievance, he sent him a check for the entire amount of the new money settlement three years after receiving it from the insurer. In order to cover the check, he deposited \$12,500 into his trust account that same day. The attorney delayed responding to the grievance for six months after having to appear and show cause to the Commission for his failure to respond. After several months of requests, the attorney eventually provided his trust account records to ODC. ODC's requests for admission were deemed admitted after a motion to compel discovery was filed, and the attorney failed to respond or otherwise plead. Following a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.3, 1.15, 1.18, 8.1(b), and 8.4, MRPC, and Rule 8A(6), MRLDE. Upon the Commission's recommendation, the Supreme Court indefinitely suspended the attorney from the practice of law for one year and ordered him to pay the costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 13-0321 (2014).

Misappropriation and co-mingling client funds; failure to keep proper trust account records/client ledgers; failure to provide clients an accounting.

Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The

checks were deposited into the attorney's trust account but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Withdrawing funds from trust account before earned or expended. Attorney was retained to prepare and file a marriage-based immigration petition with the U.S. Citizenship and Immigration Services of the Department of Homeland Security. She deposited the \$2,000 retainer plus an additional \$900 into her trust account. For over a year, the attorney continually misrepresented to her clients that she had filed the petition and paid the \$420 required filing fee. She sent the clients an invoice indicating the filing fee had been paid and their retainer balance was less than \$65. She had withdrawn nearly all of the funds from her trust account. One year after being retained, the attorney told her clients the filing fee had not cleared her account so she would just re-file the petition. She again misrepresented to her clients that she had filed the petition. Three months later, she informed them she could no longer represent them and sent the petition and filing fee to the Department of Homeland Security the following day. Throughout the representation, she failed to keep her clients reasonably informed about the status of their case and/or failed to promptly comply with their requests for information. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.3, 1.4, 1.15, 1.18, 8.4(c), MRPC. The COP recommended the attorney be publicly admonished by the COP, and be assessed the costs of the disciplinary proceedings. The Court accepted the COP's decision as final. *In re Deborah S. Smith*, MT PR 13-0296 (2014).

Failure to deposit unearned fee into IOLTA trust account; failure to timely return unearned fees. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter,

the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure to keep personal funds separate from client funds; failure to properly maintain trust account. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.15 and 1.18, MRPC. Specifically, he admitted co-mingling his personal funds with client funds in his office IOLTA trust account and paying certain office and personal expenses from that account during the period of December 2003 through June 2011. He also admitted failing to maintain his IOLTA trust account in accordance with the Trust Account Maintenance and Audit Requirements pursuant to Rule 1.18(e)(2), MRPC. By his conduct, he committed multiple violations of Rules 1.15 and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re J. Gregory Tomicich*, MT PR 12-0064 (2013).

Failure to deposit unearned fees into trust account. Attorney was retained to assist his client regarding his supervised probation for a criminal conviction in Montana. His supervision was subsequently transferred to California, and the State of California required him to submit to electronic monitoring, which caused problems in connection with his job as truck driver. The attorney was paid \$2,000 to represent his client regarding the electronic monitoring imposed by the State of California. The attorney did not communicate the scope of his representation and the basis or rate of the fee to the client in writing, did not deposit the \$2,000 into a trust account and has not had a trust account for many years. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.5 and 1.18, MRPC, for his failure to communicate, in writing, the scope of the representation and the basis or rate of the fee and expenses for which his client would be responsible, and for his failure to deposit his client's funds into a trust account. The COP recommended the attorney be disciplined by public censure and probation for two years, subject to certain conditions, and be assessed the costs of the disciplinary proceedings for violating Rules 1.5 and 1.18, MRPC. The Court adopted COP's Findings of Fact, Conclusions

of Law and Recommendation in their entirety. *In re Michael R. Tramelli*, MT PR 11-0091 (2012).

Failure to deposit unearned fees into trust account; failure to comply with Trust Account Maintenance Rules. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to safekeep property; failure to return funds; withdrawing funds without knowledge or consent of the interested parties; disbursing funds without authorization; utilizing an out-of-state, non-interest bearing trust account; misappropriation of funds; making misrepresentations. Attorney drafted documents to implement certain investment programs, which were promised to result in substantial returns on the capital. He also met with several potential investors to explain the implementation and participation documents. He represented certain individuals and their entities who participated in the investment programs, along with several others. The funds paid to invest in the programs were deposited into a trust account established by the attorney. The investors were assured the funds would not be used or depleted and would be repaid with a return of between 300% and 400% within one year. Investors were to receive quarterly returns on their money, and the attorney was responsible for transferring funds and remitting payments to investors. The attorney told investors that the funds would be held in trust and not transferred or removed without their permission. The attorney incidentally established two separate trust accounts at a bank outside the state of Montana. His legal fees and expenses were paid from one of the trust accounts. The attorney made several unauthorized transfers to and between the trust accounts he controlled – the money of which belonged to either clients or investors – and made unauthorized payments from those accounts to third parties. The transactions were not for the benefit of his clients or the investors. When investors demanded the return of their money, the attorney did not have sufficient funds in the account and did not return the money. Investors filed lawsuits against the attorney and obtained judgments, some of which had not been satisfied. The attorney attempted to delay, confuse, and avoid admission of

his misappropriation of funds. After finally admitting to the misappropriation, he asserted that he did not benefit personally; however, he received nearly \$168,000 over a 16-month period for fees, costs, and expenses. The ODC filed a formal complaint alleging the attorney knowingly used funds held in trust for an improper purpose and without the knowledge or consent of the owners of the funds; misled investors when they sought information regarding funds held in trust; personally benefitted by paying himself with trust funds while holding off requests of investors for information or return of their funds; misappropriated funds of an investor without its knowledge, consent, or permission; failed to maintain funds in an interest-bearing trust account; and failed to maintain funds with a Montana bank. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.15(a), 1.18, and 8.4, MRPC. The COP recommended the attorney be disbarred from the practice of law, pay restitution to two of the investors if he were to seek reinstatement, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and disbarred the attorney from the practice of law, ordered him to pay restitution to two investors (\$550,000 to one and \$130,000 to the other) as a condition for applying for reinstatement, and pay the costs of the proceedings. *In re David P. Rodli*, MT PR 10-0412 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained to handle a bankruptcy for his clients, who paid him a \$1,800 flat fee. The attorney deposited the money into his operating account and not into his trust account; he took the fee before it was earned. The attorney failed to communicate the fee arrangement and the scope of his representation to his clients in writing. The attorney failed to file a bankruptcy petition for his clients. He accepted the representation despite his large caseload. The formal complaint alleges violations of Rules 1.3, 1.5, 1.15, 1.16(a) and 1.18, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure, to be placed on probation for two years, and to pay costs of the disciplinary proceedings. *In re Stephen R. McCue*, MT PR 09-0611 (2010).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney

oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to deposit retainers in trust account. Attorney was hired to represent a widowed, elderly woman in three separate matters: termination of a Charitable Remainder Trust (CRT), a tort action and a conservatorship proceeding. She had previously executed an unlimited power of attorney for her 71-year-old nephew to manage her assets. Between the nephew's mishandling of her assets and the attorney's fees charged to the client, her \$1,000,000 estate was depleted to less than \$5,000. The attorney originally signed a fee agreement with the client to terminate the CRT for an hourly rate of \$125. The CRT consisted of \$365,000 of the client's \$1,000,000 estate. The CRT took less than one month to terminate, and all of the beneficiaries voluntarily relinquished their interests in the CRT. The client paid the attorney over \$8,300 for the 65.9 hours of work he claimed to have performed in the matter. The attorney signed a second, separate fee agreement two weeks later related to the tort action. The agreement provided that the client would pay the attorney a \$20,000 retainer, which would be billed against at \$125 per hour. It further provided that they would divide any recovery in the action 35% to the attorney and 65% to the client. Prior to the resolution of the case, the attorney was removed as the attorney and it ultimately settled for \$150,000. However, he had already collected approximately \$175,000 for his work performed in the tort action based on his hourly agreement. Three years later, the attorney received an additional \$50,000, but based on the attorney's accounting, it is impossible to determine to which litigation the \$50,000 retainer fee applied. He contended he used it to cover the cost of his work in the third matter, the conservatorship action, although it had not begun until 18 months after the retainer was collected. The attorney did not place either of the retainers into an IOLTA account or a client trust account, but rather placed the

\$20,000 and \$50,000 retainers directly into his operating account. The attorney next modified the first fee agreement relating to the CRT termination from the hourly fee arrangement for work already completed to a contingent fee arrangement. He wrote the client a letter informing her that the contingent fee for his representation of her in the CRT termination, resolved almost two years earlier, would be one-third of the amount he had “recovered” through his prosecution of the uncontested termination proceeding. The elderly woman signed the consent form at the bottom of the letter. A few months later, the attorney further refined the fee agreement relating to the CRT termination through a letter to the nephew. He acknowledged receipt of \$10,000 and confirmed he would receive \$10,000 monthly installments for the remainder of the year, totaling \$70,000, plus an additional \$50,000 the following year. The attorney revised the agreement a final time, three years later, through a “supplemental attorney-client fee contract” intended to replace the original hourly fee agreement in its entirety and to be “retroactively effective” from the date of the original agreement. The supplemental agreement provided that the attorney would receive one-third of \$365,000, which was the value of the CRT, for a total of \$121,545. The client paid the attorney a total of \$296,545 for his services in the three separate matters. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 1.5, MRPC, for his unreasonable fee in the CRT termination action and Rules 1.15 and 1.18, MRPC, for failing to deposit the \$20,000 and \$50,000 retainer fees into a trust account. The Montana Supreme Court ordered the attorney receive a public censure by the Court with a 60-day suspension commencing as of the date of the public censure, and to pay the costs of the disciplinary proceedings. *In re Engel*, 2008 MT 42, MT 05-174 (2008).

Failure to hold client funds separate from attorney funds; failure to supervise employee. The attorney, pursuant to a Rule 26, MRLDE, tendered admission, admitted the following: The attorney employed a secretary/paralegal for approximately 4 years who embezzled several hundred thousand dollars from estates represented by the attorney. The secretary wrote herself and her creditors checks on the law firm account and forged the attorney’s signature. The attorney had access to all bank records, client files, bank statements and client accounts during the period of employment. In addition, client funds were also commingled with and used for general office purposes. Business records showed the attorney’s office accounts would have operated in the negative from time to time but for unearned client funds and embezzled money in the office accounts. Despite having access to the pertinent records, the attorney failed to observe his employee’s activities or properly monitor the client accounts. The attorney admitted violating numerous rules of professional conduct as a result of these events, including Rule 1.18(c), MRPC, for failing to hold client property separate from his own property, failing to maintain trust accounts as prescribed by the Court’s Trust Account Maintenance and Audit Requirements (1989), and failing to promptly deliver to clients or third persons funds that clients or third persons were entitled to receive. The Montana Supreme Court accepted the attorney’s admission and indefinitely suspended the attorney for not less than 18 months and ordered the attorney to pay restitution to his clients. *In re McGee*, MT 03-723 (2004).

Use of client funds to pay expenses of another client; failure to safeguard. Attorney hired to represent an estate in probate proceedings. The estate had assets in excess of a half-million dollars. Most of the funds were deposited into an estate account over which the attorney maintained control. More than half of the estate funds were withdrawn from the estate account and deposited into the attorney’s trust account. Most of the funds from the trust account were

then transferred into the attorney's operating account and used for various purposes, including paying the expenses of another client. The Commission on Practice called the attorney's misuse of client funds "staggering," and violative of Rule 1.18, MRPC, and the Trust Account Maintenance Rules. The Montana Supreme Court adopted the Commission findings and disbarred the attorney for this and other violations of the rules of professional conduct. *In re Holt*, MT 99-615 (2000).

RULE 1.19: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted.
- (b) The entire practice is sold to one or more lawyers or law firms.
- (c) Actual written notice is given to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and
 - (3) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- (d) The fees charged clients shall not be increased by reason of the sale.

(No annotations are available relating to violations of Rule 1.19, MRPC.)

RULE 1.20: DUTIES TO PROSPECTIVE CLIENT

- (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had consultations with a prospective client shall not use or reveal information, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
 - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
 - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and:
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.

(No annotations are available relating to violations of Rule 1.20, MRPC.)

COUNSELOR

Rule 2

RULE 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Relying solely on co-counsel to prepare pleadings abdicated independent professional judgment. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting to certain facts as alleged in the Complaint and to violating Rules 1.7(a) and 2.1, MRPC. The attorney voluntarily resigned his law license during the pendency of the disciplinary proceedings. The attorney admitted sponsoring his co-counsel on his *pro hac vice* application for admission to represent their clients in a multi-party state court lawsuit. The attorney obtained a \$12 million judgment on behalf of his plaintiff client against he and his co-counsel's defendant client. The attorney admitted he relied exclusively on co-counsel to prepare pleadings on behalf of both his clients, thereby abdicating his independent professional judgment in violation of Rule 2.1, MRPC. After a Rule 26 hearing, COP submitted its Recommendation re: Rule 26 Conditional Admission and Affidavit of Consent to the Montana Supreme Court, which the Court accepted and adopted. The Court ordered the attorney to maintain his law license on Resigned status for a minimum of five years and pay the costs of the disciplinary proceedings for violating Rules 1.7(a) and 2.1, MRPC. *In re George Best*, MT PR 17-0476 (2019).

Representation of client limited by attorney's personal interests; failed to promptly deliver funds to third party; failed to render candid advice. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.7, 1.15, and 2.1, MRPC. Specifically, he admitted he represented an injured party from a motor vehicle accident. The chiropractor who treated the injured party was the attorney's former client. The attorney believed the chiropractor still owed him money from his prior representation. After the chiropractor sent his bills to the insurer of the liable party for payment, the insurance company sent a check to the chiropractor made payable to him, the attorney and the injured party. The attorney advised the chiropractor he would endorse the check after he received payment for the balance due on his bill. With no response from the chiropractor, the attorney requested the insurance company re-issue the check payable only to him. Upon receipt, he deposited the check into his trust account. The attorney paid the chiropractor the money due to him after he filed his complaint. The attorney admitted that he failed to promptly deliver funds to his former client/third party which he was entitled to receive in violation of Rule 1.15; that there was a significant risk his representation of his new client would be materially limited by his personal interests in violation of Rule 1.7; and that he failed to exercise independent professional

judgment and render candid advice in violation of Rule 2.1. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be publicly censured, pay restitution of interest on the funds he delayed paying to his former client, and pay the costs of the disciplinary proceedings. *In re Robert G. McCarthy*, MT PR 13-0492.

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction; and engaging in fraud, dishonesty, deceit, and misrepresentations. Attorney was hired to represent one of the co-personal representatives of an estate. The heirs were attempting to sell the real property belonging to the estate. An initial market analysis of the estate property suggested the sale price be \$125,000, but the attorney's client refused to sign the listing agreement. The attorney wrote opposing counsel suggesting they hire an appraiser, and he would provide a copy of the appraisal to opposing counsel. The attorney received the written appraisal report, which estimated the property's market value at \$234,000. The attorney provided a copy to his client and offered to purchase the property for \$125,000, which he said would generate a net profit to her that was comparable to a \$200,000 sale because he would waive his fees. The client signed the written offer as co-PR but did not sign a consent and conflict waiver. The attorney delivered his \$125,000 purchase offer to opposing counsel for consideration and advised that he did have a conflict waiver from his client. The other co-PR rejected the offer, and the attorney increased it to \$140,000, which again was rejected. The attorney then informed opposing counsel of the \$234,000 appraisal and provided the market value analysis, which indicated the property value was in the \$249,000-\$263,000 range. The estate property was subsequently sold to a third party for \$192,000. The ODC filed a formal complaint alleging the attorney had a significant risk that his representation of his client, as co-PR, would be materially limited by his personal interests; he failed to exercise independent professional judgment and render candid advice; he failed to fully disclose the transaction and terms of the executory contracts and transmit them in writing to his client in a manner that could be reasonably understood by her; he failed to advise his client in writing of the desirability of seeking independent legal counsel regarding the transaction; he failed to obtain his client's informed consent, in writing, to the essential terms of the transaction and the lawyer's role in the transaction; and his failure to disclose the second appraisal to opposing counsel while making purchase offers was deceitful. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.7, 1.8(a), 2.1, and 8.4(c), MRPC. The COP recommended the attorney be publicly censured by the Court, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Brad L. Arndorfer*, MT PR 11-0649 (2012).

RULE 2.2: EVALUATION FOR USE BY THIRD PERSONS

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

(No annotations are available relating to violations of Rule 2.2, MRPC.)

RULE 2.3: LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, settlement master, mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform all parties that the lawyer is not representing them. The lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

(No annotations are available relating to violations of Rule 2.3, MRPC.)

ADVOCATE

Rule 3

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein:

(1) without having first determined through diligent investigation that there is a bona fide basis in law and fact for the position to be advocated;

(2) for the purpose of harassment, delay, advancement of a nonmeritorious claim or solely to gain leverage; or

(3) to extend, modify or reverse existing law unless a bona fide basis in law and fact exists for advocating doing so.

(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Making non-meritorious claims in motion to recuse judge. Attorney's law firm initiated a bad faith lawsuit against the insurance company that offered a global settlement of several underlying lawsuits involving numerous plaintiffs and seven defendants. All seven plaintiffs accepted, six of which were represented by the firm. The bad faith case was pursued on behalf of one plaintiff client, alleging the defendant acted in bad faith by failing to make a good faith offer to settle her claims in the underlying lawsuit. The acting attorney in the bad faith case was disqualified from acting as trial and deposition counsel in the litigation because she was witness to the settlement allocation proceeds between her multiple clients; she was not precluded from all participation in the case. Thereafter, the law firm's associate attorney entered his appearance initially to cover the deposition of his disqualified colleague; his responsibilities advanced to primary litigator. After defendants moved for summary judgment, the attorney moved to recuse the judge arguing the Court asserted defenses favorable to the defendants and altered the disqualified attorney's deposition testimony to benefit the defendants; he further argued the judge relied on an extrajudicial source to create and assert a bad faith defense against his firm's client. The Court granted summary judgment, denied the request he be recused, and awarded attorneys' fees and costs against the attorney and his disqualified colleague. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding the attorney violated Rules 3.1(a)(1) and (2), MRPC, by making unsubstantiated assertions in his Motion to Recuse that the judge altered the deposition testimony of the disqualified attorney and created affirmative defenses for the defendant; and, by filing a motion without having a *bona fide* basis in law or fact for asserting the grounds for recusal. After the attorney objected and ODC responded, the Supreme Court accepted and adopted COP's Findings of Fact and Conclusions of Law. The Court accepted COP's recommendation in part and rejected in part. For violating Rules 3.1(a)(1) and (2), MRPC, and Rule 8.2(a), MRPC, for this

and other misconduct, the Court ordered the attorney be publicly admonished by COP but not be assessed costs of the disciplinary proceeding. *In re Brian Miller*, MT PR 18-0139 (2019).

Failing to defend client's position in lawsuit. Attorney represented a real estate developer and his two LLCs at various times, one of which was formed to act as general contractor (LLC II or general contractor) for a construction project in Montana under LLC I. A dispute arose between LLC II, as general contractor, and a subcontractor, resulting in a lawsuit. After arbitration, damages were awarded to both the general contractor and the subcontractor with the general contractor receiving a net award. The general contractor then voluntarily dismissed itself as plaintiff in the lawsuit; and, LLC I filed a Second Amended Complaint to add the general contractor as a defendant. The attorney applied and was admitted *pro hac vice* to defend the general contractor in the lawsuit. In its Answer, the general contractor admitted all allegations and failed to assert any affirmative defenses. The attorney and developer colluded to have the general contractor stipulate to judgment in favor of LLC I, and LLC I would not execute judgment if the general contractor signed a Confession of Judgment for \$12 million, which they would seek to collect from the insurers. After judgment was entered, the general contractor's insurer successfully sought to intervene and challenge the reasonableness of judgment. The district court concluded the judgment was not reasonable but awarded a \$2.4 million judgment against the general contractor/LLC II in favor of LLC I. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court concluding the attorney violated Rule 3.1, MRPC, by failing to defend LLC II against LLC I's allegations in its Second Amended Complaint. After the attorney and ODC filed objections and responded respectively, the Court accepted and adopted COP's Findings of Fact and Conclusions of Law but rejected its recommendation for discipline and, for this and other misconduct, disbarred the attorney for violating Rules 1.7, 3.1, 3.3, 8.4(c), and 8.4(d), MRPC, and ordered him to pay costs of the disciplinary proceedings. *In re Jon E. Cushman*, MT PR 17-0665 (2019).

Filing non-meritorious, baseless claims and assertions. Attorney appeared on her brother's behalf in their mother's guardianship matter. In pleadings, she made baseless allegations of unethical conduct against the joint conservator, the judge, and the guardian and made demeaning and unwarranted attacks regarding their services and integrity. The joint conservator was forced to defend himself against a lawsuit filed by the attorney, which the district court judge found frivolous. She made unsupported allegations of impropriety by the court; made unsupported allegations of criminal misconduct and false, misleading, and uncivil statements against the guardian; made false statements or statements made with reckless disregard as to their truth or falsity regarding the judge's integrity; and she presented no evidence in support of her affirmative defenses. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections. COP concluded the attorney's unsupported allegations and statements violated Rules 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. For this and other misconduct, the Court disbarred the attorney and ordered her to pay \$26,633.75 in costs of the disciplinary proceedings for violating Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Asserting non-meritorious, baseless, unsupported claims and assertions. Attorney represented his client *pro bono* in a debt collection action, to which he filed counterclaims transferring

jurisdiction to district court, seeking \$650,000 in damages. He sued the debt collector and the creditor, alleging credit defamation and violations of the Fair Debt Collection Practices Act and Montana Consumer Protection Act. Defendants counter-claimed for breach of contract and unjust enrichment. The lawsuit was contentious due to the attorney's conduct. He made multiple unsubstantiated claims for recovery of attorney fees; filed a retaliatory motion for sanctions; made repeated baseless objections during his client's deposition; and filed multiple baseless motions, including for protective order and summary judgment. The district court granted relief to the defendants and denied all relief requested by the attorney's client, labeled the attorney a vexatious litigant, and imposed sanctions against him. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, concluding the attorney violated Rule 3.1, MRPC, for filing baseless claims and contentions throughout the case, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney from practicing law for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating 3.1, 3.4(c), and 3.4(d), MRPC. *In re Terrence Wallace*, MT PR 17-0245 (2018).

Asserting non-meritorious claims. Attorney was retained to pursue an appeal in a domestic relations case, which the Supreme Court dismissed for the attorney's failure to file an opening brief. He then unsuccessfully filed an untimely Rule 60 motion for relief in district court and a motion to disqualify the district court judge for his alleged bias. He issued a subpoena and served it on the presiding district court judge to be deposed in connection with the Rule 60 motion. The judge denied the Rule 60 motion, quashed the subpoena, and ordered the attorney appear and show cause why his conduct did not violate Rule 11, M.R.Civ.P. The judge opined the attorney's factual contentions had no evidentiary support, were not warranted by existing law, and most were not supported by argument. After the hearing, the judge opined the attorney's legal contentions were not supported by legal authority; he failed to make good faith legal arguments; used highly inflammatory language to make baseless accusations of conspiracy, fraud, bias, unethical behavior and illegal acts against numerous people, including the judge; filed his motion to harass the adverse party, her attorneys, witnesses, the Court and court staff; and, asserted baseless factual contentions impugning the Court's integrity and made baseless assertions against adverse counsel with reckless disregard for their truth or falsity. The Montana Supreme Court affirmed the District Court's Sanctions Order, and the attorney paid the \$10,000 sanctions. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted, concluding the attorney violated Rule 3.1(a), MRPC, for bringing and asserting issues with no basis in law or fact for the purpose of harassment, delay, advancement of non-meritorious claims. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 3.1(a), 3.5(c), 8.2(a), and 8.4(d), MRPC. *In re Robert C. Myers*, MT PR 16-0245 (2017).

Filing frivolous claims without reasonable basis in law or fact. (Reciprocal Discipline) Attorney consented to his disbarment by the Arizona Supreme Court for alleged violations of Rules ER 3.1, 3.3, 4.4, 8.4, 3.4, 1.2(d), 5.1(b), 4.1, and 8.1 of the Arizona Rules of Professional Conduct. The complaint alleged, in short, that the attorney represented another attorney in a lawsuit against numerous parties without a reasonable basis, that he mischaracterized his representation of the attorney as *pro bono*, that he improperly allowed his attorney client to sign

the complaint in that lawsuit even though she was a party and not an attorney in the case, and that he falsely portrayed the nature of his representation of his attorney client in the subsequent Arizona disciplinary proceeding against her. He self-reported to all jurisdictions in which he is licensed to practice, including Wyoming, Utah and Montana. The Wyoming Supreme Court issued a public censure based on that State's equivalent to MRPC 3.1; Utah followed suit. Pursuant to Rule 27A, MRLDE, ODC filed a petition for imposition of reciprocal discipline. The attorney requested a hearing, which was unprecedentedly granted. After a hearing, the Commission found no evidence to support ethical misconduct and that the attorney's consent did not include an admission of wrongdoing. It recommended the attorney not be disbarred, not be given a public censure nor ordered to pay costs, and that the Supreme Court recommend no further discipline by the U.S. District Court – District of Montana. ODC objected, the attorney responded, and the Court determined Rule 27 does not require an admission of wrongdoing to impose identical discipline. It further determined, similar to Wyoming and Utah, the attorney's conduct did not warrant disbarment, but rather, a public censure was appropriate, along with payment of costs. *In re Edward P. Moriarity*, MT PR 14-0564 (2016).

Advancing non-meritorious claims. Attorney filed a lawsuit against an electric company seeking damages for property loss after the electric company terminated services to a townhouse. Despite his assertion, he did not own the townhouse. He claimed \$100,000 in damages to the townhouse and \$40,000 to his personal property. In deposition testimony, the attorney admitted he held no interest in the townhouse and agreed to amend his pleading. His amendment changed his assertion of “owned and occupied” to “occupied and paid for” the townhouse. During discovery, he provided inaccurate and untruthful information regarding his alleged damages, identity of damaged property, and his ownership in the townhouse. During litigation, the district court found the attorney in contempt for failure to comply with a sanctions order. After investigation, the electric company filed a second motion for sanctions based upon the attorney's false damages claims. The district court determined he overstated the amount of damages by at least \$18,700 in an attempt to obtain a larger settlement or damages award and dismissed his claims as an appropriate sanction. The attorney appealed, misrepresenting in his notice that no hearings were ever held, thus no transcripts were available. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation, which the Court adopted. The Montana Supreme Court ordered the attorney be suspended from the practice of law for 60 days and ordered to pay costs of the disciplinary proceedings for violating Rules 3.1(a), 3.4(b) and (c), 8.4(c) and (d), MRPC. *In re Larry G. Schuster*, MT PR 15-0264 (2016).

Knowingly asserting false claims; failing to make diligent inquiry before making representations to the court; improperly making assertions to embarrass opposing party. (Reciprocal Discipline) Attorney was publicly censured by the Supreme Court of Wyoming, upon recommendation of the Wyoming State Bar's Board of Professional Responsibility, and ordered to pay costs in the amount of \$15,731.76 and an administration fee of \$500. The attorney represented a third party to a defamation lawsuit filed in federal court, who was subsequently sued for defamation for his involvement. In representing his client, the attorney allegedly filed affirmative defenses and counterclaims knowing the allegations contained therein were false, represented to the court a party's testimony as a basis for relief without first conducting a reasonable inquiry into his client's apparent bribery of the party to give false testimony, and asserted embarrassing detailed allegations about the opposing party for improper

purposes. The Board determined by clear and convincing evidence that the attorney violated Rule 3.1(c), WRPC, which is similar or equivalent to Rule 3.1(a) of the Montana Rules of Professional Conduct. Subsequently, the Montana Supreme Court ordered the imposition of identical discipline and publicly censured the attorney pursuant to Rule 27A, MRLDE. *In re Laurence W. Stinson*, MT PR 14-0746 (2015).

Filing frivolous motions and appeals. (Reciprocal Discipline) Attorney was disbarred by the Washington Supreme Court for violating Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d) of the Washington Rules of Professional Conduct by his misconduct arising out of litigation involving the probate of his mother's estate wherein he was the personal representative. Even after he was removed as personal representative, he continued to file several frivolous appeals and subsequent litigation resulting in four contempt findings and sanctions against him totaling \$138,000. He knowingly and with dishonest intent violated the rules, causing actual injury to other heirs and the administration of justice. Pursuant to Rule 27A, MRLDE, ODC filed a petition for imposition of reciprocal discipline, which the Court granted and disbarred the attorney from practicing law in Montana. *In re Russell K. Jones*, MT PR 15-0073 (2015).

Filing frivolous lawsuit. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Filing frivolous motions. Attorney was hired to represent his client in dissolution proceedings. The district court entered its decree, and the attorney filed a notice of appeal but failed to comply with the mandatory mediation requirements, failed to submit his client's position statement to the mediator, and failed to file an appeal brief. The Supreme Court dismissed the appeal. The client's ex-wife filed several motions with the district court, including one for sanctions, for failure to comply with court orders. The attorney filed a response, which the client's ex-wife

argued had no factual or legal basis and sought sanctions. The attorney did not respond. The attorney did not notify his client of the court's hearing on the motions, nor did he appear at the hearing. The client was found in contempt and was ordered to pay his ex-wife's additional attorney fees, subject to his right to object. The attorney did not file objections, and the court entered judgment of \$3,870.33 against his client. The client hired other counsel. A formal complaint was filed, the attorney defaulted, and all allegations of the complaint were deemed admitted. The attorney voluntarily surrendered his license to practice. His license was already indefinitely suspended for his conduct in another matter. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 3.1, and 3.2, MRPC. The COP recommended the attorney be disbarred and assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 12-0448 (2013).

False, baseless accusations about presiding judge in pro se post-divorce proceedings. (Reciprocal Discipline) Attorney was suspended by the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts, for a period of one year and a day, pursuant to the report filed by the Board of Bar Overseers. The report concerns the attorney's conduct while representing himself in post-divorce proceedings. The conduct in question involves his numerous disparaging statements concerning the integrity and qualifications of the presiding judge made throughout the proceedings and his filing of a civil complaint against the judge. The Board of Bar Overseers determined the attorney violated Rules 3.1, 8.2, 8.4(d) and (h) of the Massachusetts Rules of Professional Conduct, which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. Subsequently, the Montana Supreme Court ordered the imposition of identical discipline and suspended the attorney for one year and one day. *In re Daniel J. Harrington*, MT PR 12-0746 (2013).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a

two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Misrepresentations to bankruptcy court; fee application not supported by good faith. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 3.1, MRPC. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Frivolous attorney's lien. Attorney represented plaintiffs in a construction dispute. The case was subsequently settled and dismissed prior to any judgment. A dispute arose between the attorney and his clients over the fee. The attorney subsequently conceded the fee dispute and wrote a letter intended to write off the fee. The attorney then changed his mind and filed a Notice of Attorney's Fee Lien in a separate dissolution action that he was handling for one of the plaintiffs, which improperly included the amounts alleged to be owing in connection with the construction litigation. The attorney did not advise his client he had changed his mind about pursuing the fee in the construction case. The Commission on Practice determined that the attorney violated Rule 3.1, MRPC, by asserting matters that were frivolous. After rejecting certain factual findings, the Supreme Court adopted the Commission's recommendation and issued a public censure to the attorney for this and other violations. *In re Keedy*, MT 02-160 (2003).

Filing claim based on facts disputed by client. The attorney filed a complaint on behalf of two married couples alleging the defendant social workers and related organizations provided the plaintiffs poor and inaccurate marital advice, causing damage to their marital relations. In the context of a separate disciplinary action, one of the clients testified that she had informed the attorney that certain of the allegations contained in the complaint were untrue. The Commission brought a subsequent disciplinary action in connection with that testimony. The attorney admitted his misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 3.1, MRPC, by litigating an action after the client had communicated the invalidity of certain facts underpinning the action. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney (who was already indefinitely suspended) for an additional period of not less than nine months. *In re Sisler*, MT 01-557 (2002).

Asserting issues and filing pleadings not well grounded in fact. The Commission on Practice determined the attorney violated Rule 3.1, MPRC, among others, on "numerous occasions" by asserting issues and filing/signing pleadings which were not well grounded in fact. The Montana Supreme Court suspended the attorney indefinitely. *In re Tierney*, MT 99-148 (2000).

No factual support for pleadings. Attorney was hired to represent defendants in a federal lawsuit. In the course of the representation, attorney filed counterclaims against the plaintiffs, alleging RICO violations and fraud. Eventually, those claims were dismissed through motions for summary judgment. The plaintiffs then pursued Rule 11 sanctions, which were granted

against the attorney in an amount in excess of \$60,000. The federal judge wrote that the attorney failed to properly investigate her counterclaims before filing them and that “one must indulge in much unfounded inference and innuendo to reach the conclusions of wrongdoing asserted by” the attorney and described one of her claims as “rank speculation.” The attorney continued to reassert her unfounded counterclaims in amended pleadings. The Commission on Practice determined this conduct violated Rule 3.1, MRPC, among others. The Montana Supreme Court rejected some unrelated Commission findings and modified the recommendation in suspending the attorney from the practice of law for six months for this and other violations. *In re Compton*, MT 96-545 (1997).

Filed suit against client to collect fees to which the attorney was not entitled. Attorney entered into an agreement to represent a client in a disability claim before the Social Security Administration. The administrative judge denied the claim. Federal law requires a social security claimant to secure the approval of the secretary or his designee of all fees. Attorney failed to secure such approval. The attorney filed suit against his client to recover unpaid attorney fees. The lawsuit was dismissed and the dismissal upheld by the Montana Supreme Court. The Commission on Practice determined filing suit to collect unapproved fees violated Rule 3.1, MRPC. The Montana Supreme Court agreed and publicly censured the attorney for this and other professional misconduct. *In re Nye*, MT 95-072 (1996).

RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Failure to expedite litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. In the first matter, the attorney was retained to pursue a breach of contract action. He filed a lawsuit, discovery ensued, and he filed an opposed motion to amend the complaint. No ruling or activity took place for over a year when the attorney moved to withdraw and filed an attorney's lien, prompting the Court to deny the attorney's motion to amend the complaint and hold the attorney's motion to withdraw in abeyance pending further explanation. No other activity took place until opposing counsel filed a Motion to Dismiss for Failure to Prosecute, which the Court granted and ordered default for the attorney's failure to respond. The attorney's failure to expedite the litigation violated Rule 3.2, MRPC. In the second matter, the attorney's firm was retained to pursue a wrongful termination and hostile work environment claim. The firm filed the lawsuit and later amended it to include additional defendants and claims. The Court dismissed two defendants and the hostile work environment claim and ordered the firm to file a Second Amended Complaint, which they failed to do. After the client contacted them, they undertook settlement discussions and communicated a proposal to the client; he advised them to pursue negotiations and discovery. They did neither and failed to respond to the client. The attorney then advised the client the firm could no longer represent him and would move to withdraw from the case, which he failed to do until the client terminated his representation months later. The attorney's failure to expedite the litigation violated Rule 3.2, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the *Conditional Admission*. For this and other misconduct, COP ordered the attorney be publicly admonished, be placed on probation for three years with conditions, and pay the costs of the disciplinary proceedings for his multiple violations of Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. *In re Matthew Lowy*, MT PR 20-0592 (2021).

Failure to expedite litigation of client's counterclaim. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint, acknowledging he could not successfully defend himself against the facts and allegations in Counts One, Three and Four and admitting he violated Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. The attorney was retained to defend his client in a breach of contract lawsuit filed against her by her former realtor regarding a broker's fee dispute and to pursue her counterclaim against the realtor. The attorney failed to expedite the prosecution of his client's counterclaim consistent with her interests in violation of Rule 3.2, MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order on Rule 26 Conditional Admission wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP in writing and pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4(a), 1.5, 1.18, and 3.2, MRPC. *In re Bruce M. Jacobs*, MT PR 20-0271 (2020).

Failure to expedite litigation of clients' guardianship/conservatorship matter. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. In the second matter, the attorney was hired to assist her clients in seeking guardianship of the husband's mother and conservatorship over her estate. The attorney immediately prepared and filed the necessary documents with the court to initiate the proceedings. The court appointed a physician, visitor attorney, and the clients as temporary co-guardians and co-conservators; the temporary guardianship/conservatorship would expire in six months. One month prior to its expiration, the attorney filed a motion to extend the temporary guardianship, which the Court granted and scheduled a hearing. The attorney failed to notify her clients of the hearing. Her clients were forced to hire and pay a new attorney to complete the matter. The attorney admitted she violated Rule 3.2, MRPC, by failing to make reasonable efforts to expedite her clients' petition consistent with their interests. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered her to pay costs of the disciplinary proceedings for her violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(a), 1.16(d), 1.18, and 3.2, MRPC. If she petitions the Court for reinstatement of her license, she must comply with certain conditions prior to reinstatement. If reinstated, she must comply with certain conditions for a period of three years. *In re Jennifer Webber*, MT PR 20-0262 (2020).

Failure to expedite litigation of clients' respective family law matters. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed formal complaints regarding two separate disciplinary matters. The attorney admitted the facts as alleged in the Complaints and to multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. In the first matter, the attorney was retained to amend her client's existing parenting plan, which she did, and the court ordered mediation. After she failed to participate in scheduling mediation, opposing counsel moved to dismiss all claims, to which the attorney failed to respond, and the court granted the motion. Her client was forced to retain new counsel to pursue his parenting plan amendments; however, due to the attorney's misconduct, he was limited in the claims for relief he could advance. The attorney admitted violating Rule 3.2, MRPC, by failing to expedite her client's litigation of his parenting plan amendments. In the second matter, the attorney filed a Petition for Dissolution for her client, and opposing counsel promptly served discovery requests. The attorney failed to respond to the discovery requests until after opposing counsel filed a Motion to Compel. After settlement, the attorney failed to effectuate the distribution of retirement assets. Her client fired her and was forced to retain new counsel to complete the property division. The attorney admitted her failure to expedite her client's divorce proceedings violated Rule 3.2, MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court ordered the attorney be publicly censured, be placed on probation for three years with conditions, pay restitution to her two affected clients, and pay the costs of the disciplinary proceedings for her multiple violations of Rules 1.3, 1.4, and 3.2, MRPC. *In re Linda Harris*, MT PR 19-0445 and MT PR 19-0626 (2020).

Failure to appear at multiple district court hearings on behalf of indigent clients. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting she violated Rules 1.3 and 3.2, MRPC, when she was tardy or failed to appear at various hearings in district court nine times over a period of four years while representing indigent clients as a public defender in multiple cases. She admitted she received several warnings from the judge and was held in contempt three times, fined and ordered to pay costs. After a Rule 26 hearing, COP issued its Acceptance of Rule 26 Conditional Admission and Affidavit of Consent, Order of Discipline. For violating Rules 1.3 and 3.2, MRPC, COP ordered the attorney be publicly admonished by the COP and pay the costs of the disciplinary proceedings. *In re Roberta M. Cross Guns*, MT PR 18-0212 (2018).

Failure to expedite litigation. Attorney represented the Montana Public Employees Association (MPEA) for several years. He advised the City of Whitefish that MPEA was going to pursue an appeal through the grievance process on behalf of a collective bargaining unit member. When MPEA's executive director inquired about the status, the attorney falsely advised the case was progressing and that he would file a lawsuit compelling the City to participate in the grievance process; however, the grievant already filed suit against the City and MPEA. He further falsely advised he filed a motion to dismiss MPEA from the grievant's lawsuit and assured he was defending MPEA in court and would prevail. MPEA fired the attorney after determining he had abandoned any defense and had repeatedly deceived MPEA and the grievant. The attorney failed to file an Answer to the Complaint deeming all allegations admitted. After a hearing, COP concluded the attorney failed to make reasonable efforts to expedite the litigation consistent with his client's interests in violation of Rule 3.2, MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b) and 8.4(c), MRPC. *In re Carter Picotte*, MT PR 16-0446 (2017).

Failure to file lawsuit or pursue litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC. Specifically, he admitted he was retained to assist a client with the dissolution of her joint investment of real property with her former boyfriend. She invested approximately \$14,000 in the property and was seeking her portion of the equity. The attorney sent a demand letter with a draft Complaint and Demand for Jury Trial that would be filed in 10 days if no resolution was reached. Negotiations were unsuccessful, and the attorney advised his client he would file the Complaint. Four months later, he emailed his client advising her the Complaint had been filed and would be served that week. Nearly three years later, he admitted to her that the Complaint had not been filed and subsequently sent her a full refund, plus 10% interest, totaling \$1,612.50. He was unable to locate her physical file. He neglected to provide her with reasonable communications and failed to advise her about the status of the Complaint or his failure to institute litigation. He misrepresented to her that he had filed the Complaint. No discovery or further case preparation had occurred. Following a Rule 26 hearing, COP issued its Order of Discipline, which included its Findings of Fact and Conclusions of Law. For violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC, COP ordered the

attorney be publicly admonished by the COP, be placed on probation for two years, subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Scott Hilderman*, MT PR 13-0713 (2014).

Failure to respond to discovery requests and motion to compel; failure to timely, or at all, assert and/or file claims; failure to expedite litigation. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC. Specifically, he admitted he failed to respond to defense counsel's discovery requests in relation to the lawsuit he filed on his client's behalf to pursue damages caused by a motor vehicle accident. He subsequently failed to respond to defense counsel's motion to compel discovery responses, resulting in his client being ordered to pay \$875 for defendant's attorney fees and costs and deeming the requests for admission admitted. The attorney subsequently served defense counsel with his client's unsigned discovery responses to the remaining discovery requests. He failed to respond to defense counsel's second discovery requests. He did not bring a claim against the estate for the at-fault driver within one year after his death, as required by statute. For over five years, during the representation, the attorney failed to conduct any discovery, failed to bring a derivative claim on behalf of his client's wife, failed to assert a claim for underinsured motorist benefits, failed to keep his client informed about the status and/or existence of the discovery requests, did not always respond to his client's inquiries about the status of his case, and failed to advise his client about the Order to Compel and resulting sanctions. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for two years, subject to specific terms and conditions, pay \$875 plus interest in restitution to his former client, and pay the costs of the disciplinary proceedings. *In re Jeffrey L. Sutton*, MT PR 13-0069 (2014).

Failure to diligently pursue and expedite lawsuit. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC. Specifically, he admitted he was retained to file a lawsuit on behalf of his clients against their real estate agent but failed to act with reasonable diligence and promptness in fulfilling his representation. He did not serve the real estate agent or otherwise pursue the filed complaint in a timely manner, and he failed to make reasonable efforts to expedite his clients' lawsuit consistent with their interests. He failed to return his clients phone calls and respond to their emails. He failed to provide them with periodic invoices for his completed work, pursuant to the fee agreement. After his clients terminated his representation, he filed an attorney's lien claiming fees were due and owing in excess of \$11,000, which was later quashed. He failed to produce his clients' file to their new attorney and did not timely execute the notice of substitution of counsel, causing further delay of their case. He failed to respond to ODC's inquiries concerning his clients' ethics grievance. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC, the Supreme Court ordered the attorney be suspended for 90 days, be publicly admonished by the COP, pay \$2,500 in restitution to his clients, and pay the costs of the disciplinary proceedings. *In re F. Ron Newbury*, MT PR 12-0680 (2014).

Failure to comply with mediation requirements; failure to file opening appeal brief; filing frivolous motions; failure to respond to motion for sanctions; failure to appear at court hearing. Attorney was hired to represent his client in dissolution proceedings. The district court entered its decree, and the attorney filed a notice of appeal but failed to comply with the mandatory mediation requirements, failed to submit his client's position statement to the mediator, and failed to file an appeal brief. The Supreme Court dismissed the appeal. The client's ex-wife filed several motions with the district court, including one for sanctions, for failure to comply with court orders. The attorney filed a response, which the client's ex-wife argued had no factual or legal basis and sought sanctions. The attorney did not respond. The attorney did not notify his client of the court's hearing on the motions, nor did he appear at the hearing. The client was found in contempt and was ordered to pay his ex-wife's additional attorney fees, subject to his right to object. The attorney did not file objections, and the court entered judgment of \$3,870.33 against his client. The client hired other counsel. A formal complaint was filed, the attorney defaulted, and all allegations of the complaint were deemed admitted. The attorney voluntarily surrendered his license to practice. His license was already indefinitely suspended for his conduct in another matter. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 3.1, and 3.2, MRPC. The COP recommended the attorney be disbarred and assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 12-0448 (2013).

Failure to expedite litigation. Attorney represented his clients regarding their claim against the Montana Department of Natural Resources and Conservation for its negligent fire suppression activities, causing damage and destroying much of the timber and grazing land on their ranch. The attorney filed the lawsuit, engaged in discovery, and hired an expert. However, two years later, he ceased working on his clients' matter, and his communication with his clients was infrequent. The attorney left the law firm where he was employed and took the clients with him. His lack of action and lack of communication continued. After six years of inaction, opposing counsel wrote the attorney and his prior law firm and suggested the case be dismissed due to the inactivity. The clients subsequently elected to have the attorney's prior law firm represent them. New counsel tried the case and recovered a substantial verdict against the State for the clients. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, and 3.2, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel L. Moss*, MT PR 11-0623 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and

Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. The attorney admitted to struggles with depression and alcoholism and she should have referred her client to other counsel. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 12-0196 (2012).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than six months, be placed on probation, during which she must comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 10-0428 (2011).

Failure to expedite litigation. Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation

consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney was retained on a contingency fee basis to pursue his client's damages related to a personal injury. After filing the Complaint, the attorney did not serve the defendant within the required three-year timeframe. As a result, the case was dismissed. The attorney was retained by the same client to defend him against a construction lien filed on his property. After his motion to dismiss was denied, the attorney failed to file an Answer, and default was entered against his client. After filing a Motion to Set Aside Default, the attorney was given another opportunity to file an Answer. The plaintiff made an offer to settle, which the attorney failed to convey to his client. Default Judgment was entered shortly thereafter. The attorney filed a Notice of Appeal with the Montana Supreme Court but failed to file an opening brief, and the appeal was dismissed. Attorney's fees were awarded to the plaintiff, and Judgment was entered against the client for the fees with interest accruing. The attorney appealed the Judgment then made a settlement offer to the plaintiff's attorney. The plaintiff rejected and made a counteroffer. The attorney paid the plaintiff the amount of the counteroffer from his own funds and dismissed the appeal. The formal complaint alleges violations of Rules 1.1, 1.2, 1.3, 1.4 and 3.2, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney to receive a public censure and to pay costs of the disciplinary proceedings. *In re Karl P. Seel*, MT PR 09-0612 (2010).

Failure to prosecute claim; failure to timely file appeal brief. Attorney was retained to represent a client regarding a personal injury claim; the client paid him a \$6,000 retainer. Three years later, the District Court issued an Order to Show Cause Why Case Should Not Be Dismissed. After the Clerk of Court sent a copy of the Order to the attorney's office, it was returned as non-deliverable. The attorney failed to notify the Court of his change of address. The Court subsequently dismissed the action for failure to prosecute. The dismissal order was sent to the attorney at the same address and was not returned. The attorney later contacted opposing counsel and at that time learned of the Order of dismissal. He advised that he would be filing a motion to reinstate the action. Two years later, he filed the motion. A hearing was held, and the Court denied the Motion to Reinstate Claim. The attorney filed a Notice of Appeal, which was dismissed because he did not timely file an opening brief. The client requested the original or a copy of the file; the attorney failed to comply and failed to account for the retainer

the client paid him. The attorney failed to respond to the informal complaint filed against him with the ODC despite ODC's two requests for a response. In a second matter, the attorney also failed to respond to ODC's two requests for a response. The attorney failed to file an Answer to the formal complaint ODC filed against him. A default hearing was held before the COP, and the attorney appeared at the hearing. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for 30 days and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re R. Allen Beck*, MT PR 09-0227 (2009).

Failure to expedite litigation. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving four formal and two informal matters. All formal cases were consolidated with the two informal cases in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaints, among others, include the following. In one case, the attorney was retained to pursue a quiet title action. He subsequently filed a quiet title complaint. Opposing counsel

eventually faxed the attorney a proposed settlement agreement. The attorney sent the proposed agreement to his client four months later. The client accepted the terms of the agreement and requested the attorney send her an original to sign. The attorney failed to comply with her request until over one year later. The formal complaint alleged, among others, violations of Rules 1.2, 1.3, 1.4 and 3.2, MRPC. In another case, the attorney was retained to assist a client regarding child support and child custody matters; there was no written fee agreement or engagement letter. The child support proceedings before the Child Support Enforcement Division resulted in a significant increase in the client's child support obligations. The attorney prepared but failed to file a Motion to Modify Custody and supporting affidavit. The attorney oftentimes failed to respond to the client's requests for status updates regarding his case. The client retained a new attorney, who pursued changing the Parenting Plan arrangements and was successful in attaining favorable results for the client. The formal complaint alleged, among others, violations of Rules 1.3, 1.4 and 1.5, MRPC. In the third case, the attorney was retained and paid by a client's relative to represent the client to appeal his criminal conviction. The attorney did not deposit the unearned retainer fee into his trust account, and there was no written fee agreement or engagement letter. After being retained, the attorney did not communicate with the client and did little or no work on the client's behalf. As a result, the client retained new counsel. The formal complaint alleged violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.8(f), 1.15 and 1.18, MRPC. The attorney represented one client in a divorce from another client whom the attorney represented to assist in obtaining Social Security disability benefits. The concurrent representation could have and may have been materially limited by the attorney's responsibilities to either or both clients. During the representation of the first client in a separate, unrelated case, the attorney loaned the client money which was re-paid from the settlement proceeds or award. The formal complaint alleged violations of, among others, Rules 1.7 and 1.8(e), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 10-year term, and to pay the costs of the disciplinary proceedings. The terms of the probation include: 1) to not engage in the private practice of law, including *pro bono* work; 2) notify ODC if employment with the State Public Defender Office is terminated; 3) to not accept new employment without written consent from ODC; 4) provide ODC with authorizations requested to obtain records of employment and personnel information, and, 5) pay \$2,000 in restitution. *In re Walter Hennessey*, MT PR 07-0092, MT PR 07-0227, MT PR 07-0514, and MT PR 07-0620 (2009).

Failure to timely serve civil complaint. Attorney was retained by his client to pursue wage and constructive wrongful discharge claims. Without consulting his client, the attorney did not pursue the wrongful discharge claim nor did he advise his client that he would not pursue that claim. The complaint filed asserted only wage claims. The client testified that the attorney advised him that the wrongful discharge claim would be filed separately at a later date. No summons was issued at the time the attorney filed the complaint, but rather he caused the summons to be issued at a later date. He failed to serve the summons until after the applicable statute of limitations had expired. The opposing party filed a motion to dismiss, which was granted. The attorney appealed to the Supreme Court but failed to request a transcript of the hearing. The attorney's appeal was unsuccessful. The attorney failed to keep his client informed about the status of his case nor did he timely or regularly respond to his client's attempts at communication. He failed to advise his client of the district court's decision or his appeal of the

decision. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC and ordered he receive a public censure and pay costs of the disciplinary proceedings. *In re Hennessey*, MT PR 06-0794 (2008).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the attorney acknowledged in a *Conditional Admission and Affidavit of Consent* submitted prior to filing a formal complaint, that his acts or omissions during his representation of a client violated Rules 1.1, 1.3, 1.4 and 3.2, MRPC. The Montana Supreme Court ordered the attorney receive a public censure by the Court and to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 08-0169 (2008).

Failure to file appellate brief, failure to expedite litigation. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Failure to expedite litigation. The allegations in the Formal Complaint included the following. Attorney was retained to represent his client regarding a Petition for Paternity, Parenting Plan and Support. There was no fee agreement or engagement letter. At all times, the client was on active duty with the United States Army and was stationed in California. The parties engaged in negotiations over the terms of a parenting plan and child support. The attorney's client made numerous attempts to communicate with him, but the attorney often failed to respond or did not respond in a timely manner. At a hearing, the attorney misrepresented to the District Court that his client agreed with the terms of the Petitioner's proposed parenting plan and that the matter was settled. The client had not agreed and had not authorized the attorney to accept the terms of the proposed parenting plan. Opposing counsel submitted a Final Parenting Plan to the Court after communicating with the attorney. The parties' signature lines had been removed from the Plan. The Court signed and filed the Final Plan. The attorney's client was not notified that the Court had issued a Final Parenting Plan until a couple months later. The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. According to the Montana Supreme Court's Order, the attorney admitted in his tendered admission to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2, MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court, be placed on probation for two years and payment of costs of the disciplinary proceedings. The terms of the probation as ordered by the Court include continuing with prescribed medical treatment for depression, maintaining his private law practice at a manageable level, filing quarterly written reports with ODC denoting his adherence to the treatment program and disclosing any current or potential

issues of attorney misconduct, and providing ODC with a release to obtain information from his treating providers. *In re Erekson*, MT PR 07-0105 (2007).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.2, 3.4, 3.5, and 8.4(d) in exchange for public censure and an assessment of expenses and costs of the proceedings. The Montana Supreme Court accepted the attorney's tendered admission. The Court ordered that the attorney be publicly censured by the Supreme Court of the State of Montana and be assessed with costs of the proceedings. *In re Truman*, MT PR06-0525 (2006).

Failure to communicate, act with diligence, and forward client materials. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Musick*, MT 05-607 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

Failure to act; failure to prosecute appeal. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. During representation of these clients, the attorney consistently failed to comply with his responsibilities regarding the appeals process. He ignored deadlines and failed to file appellate briefs in three of four cases. Attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 3.2, MRPC, and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until

his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Failure to file appeal. The Court appointed the attorney to represent a client on felony charges. The client was convicted and sentenced to prison. The attorney failed to file an appeal, as the client requested, and took no steps to withdraw as his counsel or otherwise protect his client's interests. The attorney made no attempt to expedite the client's appeal. As a result, the attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violating Rule 3.2, MRPC, as well as other rules. The Montana Supreme Court accepted this admission and publicly censured the attorney. The Court also ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Montgomery*, MT 04-724 (2005).

Failure to act. Attorney was hired by the client to probate an estate. During representation, the attorney failed to attend meetings with the client, the heirs of the estate, and their attorneys and did not return the client's numerous phone calls. After they finally met, the attorney failed to accomplish any tasks agreed to at meetings with the client. When the client filed a petition for accounting and attorney's fees, the attorney failed to respond. He also failed to inform the client of court sanctions entered against her. The client was essentially abandoned. The attorney violated Rule 3.2, MRPC, by failing to make reasonable efforts to expedite the probate of his client's estate. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re Bradshaw*, MT 05-095 (2005).

Failure to diligently prosecute appeal. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting she violated Rule 3.2, MRPC, as well as other rules. The Montana Supreme Court accepted the attorney's admission and publicly censured her. She was also required to pay COP and ODC's costs of proceedings. *In re German*, MT 05-360 (2005).

Failure to prosecute appeal in reasonably diligent fashion. The attorney admitted her misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 3.2, MRPC, in the course of her representation of a criminal defendant. The attorney failed to comply with orders of the District Court setting deadlines and failed to prosecute her client's appeal in a reasonably diligent fashion. The attorney's misconduct was severe enough for the district judge to hold her in contempt. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney for six months and publicly censured the attorney. *In re Drew*, MT 04-417 (2004).

Asserting issues and filing pleadings not well grounded in fact. The Commission on Practice determined the attorney violated Rule 3.2, MPRC, among others, on "numerous occasions" by asserting issues and filing/signing pleadings that were not well grounded in fact. The Findings of Fact and Conclusions of Law filed with the Montana Supreme Court reveal few of the underlying facts. The Court agreed with the Commission and suspended the attorney indefinitely. *In re Tierney*, MT 99-148 (2000).

Failure to expedite litigation; failure to file required documents or appear. Relatively inexperienced attorney agreed to represent clients in a breach of contract action. In the course of her representation, the attorney failed to respond to discovery requests, appeared late and without her clients at a settlement conference, failed to respond to various motions, failed to file witness or exhibit lists, failed to file a pretrial order and failed to appear at trial, resulting in a default against the clients. Attorney spoke to clients about her desire to withdraw, but neglected to follow the procedures for withdrawal. The Montana Supreme Court found violations of several rules, including Rule 3.2, MRPC. Attorney was suspended from practice for one year. *In re Cox*, MT 98-021 (1998).

Failure to expedite litigation for client/friend. Attorney represented a client who sought to sue the State of Montana. The attorney had a social relationship with the client, whom he considered a friend. The attorney did not enter into a formal written contingent fee agreement. During the course of the representation, the attorney also failed to communicate in writing with the client, considering it unfriendly. The attorney repeatedly failed to maintain contact with the client and failed to adequately move the case forward. Client concerns about the statute of limitations were also not addressed properly. The Commission on Practice and the Montana Supreme Court found multiple violations of the MRPC, including rule 3.2, and suspended the attorney for three years. *In re Asselstine*, MT 97-193 (1997). The attorney's petition to shorten his suspension was subsequently rejected.

Failure to administer estates in a timely manner. An attorney who failed to take timely action on the administration of numerous estates for periods ranging from 12 to 17 years was found to be in violation of Rule 3.2, MRPC, by the Commission on Practice. The attorney had open estates dating back to 1975 when he came before the Commission. The Montana Supreme Court suspended the attorney for not less than one year for this and other violations of the MRPC. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney's petition for reinstatement.)

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Knowingly soliciting false witness testimony at trial and failing to correct the record. Attorney was hired to pursue a legal malpractice claim against her clients' former attorney for failing to timely pursue their medical malpractice claim after their infant son died. During trial, a defense witness rebutted the attorney's claim that he had consulted with the defendant attorney as an economic loss expert regarding the medical malpractice claims. The attorney knew her claim was false when she made it at trial and attempted to elicit testimony from her own witness to support her false claim after feeding her witness the false information. The attorney made no attempt to correct the record even after rebuttal witness testimony contradicted her claim. A defense verdict was returned, and the defendant was awarded sanctions against the attorney for the expense of calling the rebuttal witness. After a formal hearing, COP concluded the attorney violated Rule 3.3(a), MRPC, by knowingly offering evidence she knew was false and failing to take remedial measures to correct the record. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.4, 1.5(a), 3.3(a), 3.4(b), and 8.4(c), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 19-0017 (2020).

Failing to take remedial measures with tribunal regarding client's fraudulent conduct.

Attorney represented a real estate developer and his two LLCs at various times, one of which was formed to act as general contractor for a construction project in Montana. The developer was the sole member of both LLCs. A dispute arose between LLC II, as general contractor, and a subcontractor, resulting in a lawsuit. The arbitration clause in the contract limited damages to actual damages. After arbitration, damages were awarded to both the general contractor and the subcontractor with the general contractor receiving a net award. The general contractor then voluntarily dismissed itself as plaintiff in the lawsuit; and, LLC I filed a Second Amended Complaint adding the general contractor as a defendant, making the two LLCs' interests adverse. An attorney representing the two LLCs in the lawsuit subsequently withdrew, and the LLC clients had a balance owing for attorney's fees. The attorney attempted to resolve the fee dispute, suggesting they scheme to acquire the funds by filing a legal malpractice claim with his malpractice insurer for the amount owed. The previous attorney declined and later filed suit to recover his fees. The attorney then applied and was admitted *pro hac vice* to defend the general contractor in the lawsuit. The general contractor admitted all allegations in the Complaint and failed to assert any affirmative defenses. The attorney then colluded with the developer to amend the contract to eliminate the arbitration clause and limitations on damages to benefit LLC I. Because arbitration had already occurred, the amendment was backdated to a time prior to arbitration. They further colluded to have the general contractor stipulate to judgment in favor of LLC I, and LLC I would not execute judgment if the general contractor signed a Confession of Judgment for \$12 million, which they would seek to collect from the insurers. After judgment was entered, the general contractor's insurer successfully sought to intervene and challenge the reasonableness of judgment. The district court concluded the judgment was not reasonable but awarded a \$2.4 million judgment against the general contractor/LLC II in favor of LLC I. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding, the attorney violated Rules 1.7 and 3.3, MRPC, by proposing to the LLCs' previous attorney that he agree to a fraudulent malpractice insurance scheme to pay his legal fees and by failing to take remedial measures with the court when he learned of his developer client's fraudulent conduct. After the attorney and ODC filed objections and responded respectively, the Supreme Court accepted and adopted COP's Findings of Fact and Conclusions of Law but rejected its recommendation and, for this and other misconduct, disbarred the attorney for violating Rules 1.7, 3.1, 3.3, 8.4(c), and 8.4(d), MRPC, and ordered him to pay costs of the disciplinary proceedings. *In re Jon E. Cushman*, MT PR 17-0665 (2019).

Making false statements of fact or law to a tribunal. Attorney appeared on her brother's behalf in their mother's guardianship matter. In pleadings, she made baseless allegations of unethical conduct against the joint conservator, the judge, and the guardian and made demeaning and unwarranted attacks regarding their services and integrity. The joint conservator was forced to defend himself against a lawsuit filed by the attorney, which the district court judge found frivolous. She made unsupported allegations of impropriety by the court; made unsupported allegations of criminal misconduct and false, misleading, and uncivil statements against the guardian; made false statements or statements made with reckless disregard as to their truth or falsity regarding the judge's integrity; and she presented no evidence in support of her affirmative defenses. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections. COP concluded the attorney's unsupported allegations and

statements violated Rules 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. For this and other misconduct, the Court disbarred the attorney and ordered her to pay \$26,633.75 in costs of the disciplinary proceedings for violating Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Making misrepresentations to the tribunal and failing to correct them. Attorney submitted an *Amended Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint admitting violations of Rules 3.3(a) and 3.8(d), MRPC. The attorney admitted he violated Rule 3.3(a), MRPC, by making an incorrect statement to a tribunal and failing to correct it during the prosecution of drug offenses as an Assistant United States Attorney. After a Rule 26 hearing, COP issued its Acceptance of Amended Rule 26 Conditional Admission and Affidavit of Consent, Order for Discipline. COP ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings for violating Rules 3.3(a) and 3.8(d), MRPC. *In re James Seykora*, MT PR 18-0213 (2018).

Misrepresentations to the court regarding purpose of filings. Attorney filed a federal lawsuit on behalf of her and her law firm. The federal judge advised her she could not represent her firm because she admittedly was a witness, and she subsequently obtained new counsel. The defendants filed a Motion for Protective Order, and the attorney prepared her own response brief for her counsel to file. He disagreed with her position because it was not meritorious and refused to file it. The attorney advised the judge she did not object to counsel's withdrawal because he was incompetent and refused to file the brief that she had ready to file. That same day, the attorney logged into her e-filing account and filed a Notice to Court and an Affidavit with a proposed response brief attached, listing her counsel as Plaintiffs' attorney and indicating he was the attorney executing the documents. In her Affidavit, the attorney stated she filed it for the limited purposes of addressing her counsel's untimely withdrawal and unethical actions by refusing to file her response brief. Counsel later testified he did not sign the proposed brief and refused to file it. New counsel appeared on Plaintiffs' behalf, and a hearing was held the next day. The attorney admitted her previous counsel did not sign the proposed brief and she failed to advise the court of the same. The judge found she filed the brief for the purpose of presenting her arguments to the Court. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Order of Discipline wherein it concluded the attorney made misrepresentations to the court as to why she attached the response brief to her affidavit in violation of Rules 3.3(a) and 8.4(c), MRPC. For this and other rule violations, COP ordered the attorney be publicly admonished by the COP and pay costs of the disciplinary proceeding. The attorney filed objections with the Montana Supreme Court, which affirmed COP's decision. *In re Tina L. Morin*, MT PR 17-0254 (2018).

Knowingly asserting false statements of fact and offering evidence known to be false. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board found the attorney made numerous false statements of fact to the court during the lawsuit and further offered evidence to the Board he knew to be false; knowingly disobeyed his

obligation under the rules of a tribunal by failing to prepare and approve orders of the court as directed; made frivolous discovery requests and failed to make reasonably diligent efforts to comply with the former clients' legally proper discovery requests; used means that had no other purpose than embarrassing, delaying, or burdening the former clients; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation during the lawsuit; and engaged in conduct that is prejudicial to the administration of justice. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court suspended the attorney from practicing law in Montana for a period of nine months for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

Making false statements and misrepresentations to the Court. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. The insurer wired the funds to the attorney's IOLTA trust account in October 2008, which he failed to immediately distribute to the heirs or to himself for his fees. By the end of June 2010, the attorney's trust account balance was \$10.47. Between October 2008 and March 2010, the attorney paid himself \$183,100; however, he was only entitled to \$120,000 in attorney fees. During that time, he disbursed approximately \$51,000 to his client or others on her behalf, \$30,500 to his client's non-attorney advocate after he already paid him \$1,500 from his IOLTA trust account, and \$32,524 to others for litigation expenses. No funds were disbursed to the other heirs. The attorney thereafter paid himself and his client, or others on her behalf, additional funds in the IOLTA trust account using funds belonging to others. At a hearing in the state probate case in February 2013, the attorney misrepresented to the Court he was holding the settlement proceeds totaling \$110,000 in a separate trust account and had made some disbursements, including attorney fees and costs. In doing so, he violated Rules 3.3 and 8.4(c), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the parties filed objections, with the exception of the disgorgement of fees. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$65,547.10 to the other heirs, and pay the costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Failure to inform the court of material facts in ex parte adoption; failure to notify legal parent of adoption proceedings; misrepresenting facts to adoption court; failure to acknowledge parental rights; failure to correct error in adoption proceedings. Attorney represented the mother in post-dissolution custody proceedings and in adoption proceedings. The custody proceedings and the adoption proceedings were assigned to separate judges. The ex-husband, although not the biological father of one child, had joint custody of both children subject to the existing parenting plan. His non-biological child was born during the marriage, he was listed as the father on the child's birth certificate, and he raised the child as his own. While the parenting plan was being re-litigated, the attorney prepared a petition for the mother's new husband to adopt the ex-husband's non-biological child. The mother's motive and intent of the adoption was to frustrate the ex-husband's established parental rights. The attorney did not attach the existing, stipulated parenting plan to the adoption petition, as required by statute, and did not advise the adoption court that the ex-husband had parenting rights of the child. The attorney

failed to notify the ex-husband, who maintained joint custody of the child, of the adoption petition, denying him the opportunity to object to the adoption. The petition stated there were no other persons – other than the consenting, biological father and the petitioner – who had an interest in the proceedings and the adoption relieved all other persons of parental duties. After an *ex parte* hearing, the adoption petition was granted. The attorney instructed his client to continue to follow the existing parenting plan, but the mother alienated the ex-husband from the child's life. The ex-husband did not learn of the completed adoption until three years later. He eventually filed a motion to set aside the adoption. Parenting disputes continued, and a trial was held in the dissolution proceedings. The district court determined the mother proceeded with the adoption without notice to her ex-husband in an effort to deprive him of his parental rights. The attorney did not take measures to correct the adoption decree to reflect the approved parenting plan. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 3.3(d), 8.4(c) and (d), MRPC, and recommended he be suspended from the practice of law for a period of three months and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Roy W. Johnson*, MT PR 13-0079 (2014).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

False statements to a tribunal; disobeying obligations under the rules of a tribunal. Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and

Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a bankruptcy petition on his client's behalf. He was not familiar with the bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, reimburse his former client for the cost of hiring a new attorney to complete the bankruptcy, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the

attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the COP concluded that the attorney violated Rule 5.5, MRPC, because he practiced law while suspended from the practice of law pursuant to an earlier order of the Court; he violated Rules 3.3(a)(2) and 8.4(c), MRPC, by failing to inform an Indiana U.S. Magistrate Judge and Indiana counsel of his suspension from the practice of law by the Montana Supreme Court and for acting deceitfully; and he violated Rule 8.4(d), MRPC, because he failed or refused to comply with or honor the thirty-day suspension order of the Court. The Montana Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than seven months. The Court further ordered the attorney pay the costs of the proceedings. *In re Shields*, MT PR 07-0036 (2007). (In 2009, the Montana Supreme Court granted the attorney's petition for reinstatement.)

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 8.5, 8.1(b), and 3.3(d) and to other allegations set forth in the formal complaint filed against him by the COP. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney disciplined through public censure by the Montana Supreme Court, prohibition from seeking admission to the State Bar of Montana for one year, and assessment of costs of the proceedings expended by ODC and COP. *In re Neidhardt*, MT 05-476 (2006).

Misrepresentations to bankruptcy court; fee application not supported by good faith. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 3.3, MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and pay the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Assisting in clients' fraud and deception constituted misrepresentation to opposing parties and the court. Attorney was retained by his client to represent her in a will contest of her mother's will in her estate matter. The attorney also represented the mother's six grandchildren. The mother's will disinherited the client. The client petitioned the district court to be appointed as her mother's conservator, which was granted. As her mother's conservator and guardian, the client filed three inventories with the court and misrepresented that the total value of her mother's estate was worth \$1.2 million, which included several accounts worth \$270,000 that she held in joint tenancy ownership with her mother, and she was named as a beneficiary. None of the inventories distinguished between the probate assets and non-probate assets. At mediation concerning the will contest and the client's alleged misconduct in the conservatorship proceedings, the client had already claimed a fraction of the joint tenancy accounts and was working to obtain the rest of the \$270,000, which was never disclosed at mediation. The other parties assumed they were negotiating based on the \$1.2 million total estate value, which included the joint tenancy accounts. The attorney remained silent as to whether the settlement

included the joint tenancy accounts. When questioned by opposing counsel regarding whether the value of the estate included the joint tenancy accounts, the attorney remained silent, pursuant to his client's request. The attorney's client instructed him not to respond even though the client informed the attorney months before of the client's intention to take the joint tenancy accounts outside of any settlement. The attorney later drafted a stipulation purporting to resolve all disputes regarding the division of the estate. The court held a hearing on the personal representative's petition for direction on distributing the joint tenancy accounts. The court determined that the client had no right to the joint tenancy accounts because those accounts were included in the total estate value. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 1.2(d), MRPC, by following his client's instructions not to disclose material information to opposing counsel. The attorney's omission constituted a misrepresentation that assisted in his client's fraudulent purpose of taking the joint tenancy accounts outside of the settlement agreement. The attorney could have avoided the situation by withdrawing from representation under Rule 1.16, MRPC. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 3.3(a)(2), MRPC, by failing to disclose material information to the district court presiding over the contested will action, specifically, his client's intention to take the joint tenancy accounts. The attorney proceeded to misrepresent in the signed stipulation that all disputes had been settled. The attorney did not report to the district court that his client had taken some and planned to take the rest of the joint tenancy accounts outside the \$1.2 million settlement. The client engaged in fraudulent conduct intending to deceive the other parties, and the attorney assisted in their deception. The attorney's conduct violated his duty of candor toward the tribunal. The Montana Supreme Court ordered the attorney appear before it to receive a public censure and to pay all costs of the disciplinary proceedings. *In re Potts*, MT 04-562 (2007), 2007 MT 81.

Drafting false affidavit and submitting to various authorities, failure to act or disclose false information. Attorney was retained by a client to defend her against felony criminal charges of fabricating physical evidence and threats of other improper influence. The client was convicted. A few days after trial, the client faxed a document that she received and believed incriminated the victim of her crime and exculpated her. The attorney's paralegal persisted in wanting to send the fax to the prosecutor, and the attorney told her "I don't care what you do with it" so she faxed it. An investigator for the State of Montana initiated an investigation surrounding the creation and distribution of the fax. The State's investigation led to additional charges filed against the client for tampering with or fabricating physical evidence, which resulted in the State's search of the client's residence. The State then interviewed the attorney's paralegal, and she gave a statement to the prosecutor and the State's investigators. The attorney represented his paralegal during the interview. The paralegal made a number of false statements during the interview, and at no time during the interview did the attorney attempt to correct her or set the record straight. The attorney later drafted an affidavit for his paralegal to sign, which contained a number of false statements, including the fact that she sent the fax by mistake and that she did not advise anyone that she had sent the fax. The paralegal states the attorney advised her to make the false statements, and the attorney admits the affidavit contains at least one falsehood. The attorney represented to the district court, ODC and the Commission on Practice that the document was inadvertently faxed even though he admitted he told his paralegal that he didn't care what she did with the document. The Montana Supreme Court found clear and convincing evidence that the

attorney violated Rules 3.3, 3.4(b), 4.1(a), 8.1 and 8.4, MRPC and ordered the attorney receive a public censure and pay costs of the proceedings. *In re Hoovestal*, MT 05-094 (2007).

Reinstatement. Attorney was suspended from the practice of law in Montana for violations of Rules 1.16, 8.4(c)-(d) and 3.3(a)(1), MRPC, in 1988. The Montana Supreme Court denied the attorney's petition for reinstatement the following year, finding he was less than candid about efforts to take the bar in other states and he continued to deny wrongdoing in one of the matters for which he was suspended. During his suspension, the attorney did not practice law in Montana. The COP submitted its recommendations and stated it believed a sufficient amount of time had passed for the attorney to understand the importance of absolute candor. The attorney no longer denied his violation. The Montana Supreme Court accepted the COP's recommendations and reinstated the attorney to the practice of law in Montana. He was ordered to complete thirty hours of Continuing Legal Education and pay the costs of disciplinary proceedings. *In re Ziskind*, MT 87-416 (2005).

Misrepresentations to the court. The attorney was hired to obtain a parenting plan for the client's minor child. Despite the fact his client never agreed to a final parenting plan, the attorney made representations, or allowed such representations to be made to the District Court indicating his client's agreement to a Final Parenting Plan. The Plan was in fact not reviewed by, or acceptable to the client. The Montana Supreme Court determined this action was a violation of Rule 3.3(a)(1), MRPC, and subsequently suspended the attorney for 60 days. The Court also ordered the attorney to pay the costs of the COP's proceedings against him pursuant to Rule 9(A)(8), RLDE. *In re Anciaux*, MT 03-061 (2005).

Presented document bearing forged signature of client to court. Attorney represented client in bankruptcy proceeding. The attorney presented to the bankruptcy trustee a "Representation and Fee Agreement" bearing the attorney's signature and a "forged, 'cut and paste' signature" of his client, according to the Commission on Practice's Findings of Facts. The attorney admitted violating Rule 3.3, MRPC, and other rules of professional conduct. The Commission on Practice reviewed the attorney's tendered admission and recommended approval to the Montana Supreme Court. The Court accepted the Commission's recommendation and suspended the attorney for 30 days for his admitted violations. *In re Shields*, MT 04-197 (2004).

Suspended attorney appeared telephonically and self-identified as "representing" party. The attorney admitted violating several rules of professional conduct pursuant to a Rule 26 tendered admission. The attorney admitted making a false statement of material fact to a court in violation of Rule 3.3(a)(1), MRPC. The Montana Supreme Court had previously suspended the attorney from the practice of law for previous misconduct. The attorney's former law partner hired the suspended attorney to work as a paralegal. The suspended attorney was directed to request a continuance in a matter. Instead, he appeared at a telephonic hearing, stated his name and described himself as representing a party. The suspended attorney moved the court for summary judgment, which was granted. The court later determined the attorney was suspended and set aside the judgment. The Commission on Practice reviewed the attorney's admission and recommended approval to the Montana Supreme Court. The Court accepted the recommendation and suspended the attorney for not less than three years for this and other misconduct. *In re Hussy*, MT 03-735 (2004).

Allegations that judge destroyed documents or evidence. Attorney made repeated and, apparently baseless, accusations that a state district court judge destroyed evidence and court documents, received “kick-backs” from the attorney’s ex-wife in exchange for the judge’s ruling in her favor during the divorce proceedings and “fixed” an ethics complaint against the attorney who represented his ex-wife. The Commission on Practice found the attorney’s actions violated several of the Montana Rules of Professional Conduct, including Rule 3.3, MRPC. The Montana Supreme Court adopted the findings of the Commission and indefinitely suspended the attorney for a period of not less than two years. *In re Nascimento*, MT 02-778 (2004).

Frivolous attorney’s lien. Attorney represented plaintiffs in a construction dispute. The case was subsequently settled and dismissed prior to any judgment. A dispute arose between the attorney and his clients over the fee. The attorney subsequently conceded the fee dispute and wrote a letter intended to write off the fee. The attorney then changed his mind and filed a Notice of Attorney’s Fee Lien in a separate dissolution action that he was handling for one of the plaintiffs, which improperly included the amounts alleged to be owing in connection with the construction litigation. The attorney did not advise his client he had changed his mind about pursuing the fee in the construction case. The Commission on Practice determined that the attorney violated 3.3(a)(1), MRPC, by knowingly submitting a false lien. After rejecting certain factual findings, the Supreme Court adopted the Commission’s recommendation and issued a public censure to the attorney for this and other violations. *In re Keedy*, MT 02-160 (2003).

Filing claim based on facts disputed by client. The attorney filed a complaint on behalf of two married couples alleging the defendant social workers and related organizations provided the plaintiffs poor and inaccurate marital advice, causing damage to their marital relations. In the context of a separate disciplinary action, one of the clients testified that she had informed the attorney that certain of the allegations contained in the complaint were untrue. The Commission brought a subsequent disciplinary action in connection with that testimony. The attorney admitted his misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 3.3, MRPC, by filing false pleadings or failing to take proper remedial measure after he discovered the falsity. The Commission on Practice reviewed the attorney’s tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney (who was already indefinitely suspended) for an additional period of not less than nine months. *In re Sisler*, MT 01-557 (2002).

Failure to disclose relevant information. A mother and daughter owned property as joint tenants. The mother brought an action against the daughter seeking a partition. The mother orally fired her lawyer, but he remained counsel of record. The attorney who was the subject of this disciplinary proceeding represented the daughter. The daughter’s lawyer prepared a stipulation for dismissal, a proposed order for the judge and a quitclaim deed giving title to the property to the daughter. The daughter obtained the mother’s signature without the mother having the benefit of counsel and the attorney presented the stipulation to the court, which approved the dismissal. The Commission on Practice found that the attorney knew or should have known that the court would not have signed the order of dismissal had it known the mother’s attorney had not consulted his client regarding the stipulation. The Commission found

the misconduct violated Rule 3.3(d), MRPC. The Montana Supreme Court publicly censured the attorney. *In re Cummins*, MT 99-599 (2000).

Mischaracterized and distorted evidence; reassertion of claims attorney admitted were not factually supportable. Attorney was hired to represent defendants in a federal lawsuit. In the course of the representation, attorney filed counterclaims against the plaintiffs, alleging RICO violations and fraud. Eventually, those claims were dismissed through motions for summary judgment. The plaintiffs then pursued Rule 11 sanctions, which were granted against the attorney in an amount in excess of \$60,000. The federal judge wrote, “much of the evidence submitted by [the attorney] was taken out of context and without a proper foundation. [The attorney] often mischaracterized evidence to fit her version of the events surrounding the operative transactions, even when the fallacies in her reasoning were pointed out. This distortion of the record complicated the litigation and required opposing counsel and the Court to expend much additional time attempting to distill the actual facts from the purported facts.” (Bracketed material added). The judge also wrote “one must indulge in much unfounded inference and innuendo to reach the conclusions of wrongdoing asserted by” the attorney and described one of her claims as “rank speculation.” The attorney continued to reassert her unfounded counterclaims in amended pleadings, despite acknowledging to the court they were not factually supportable. The Commission on Practice determined that the attorney violated Rule 3.3, MRPC, by filings pleadings without supporting facts and mischaracterizing and distorting evidence. The Montana Supreme Court rejected some unrelated Commission findings and modified the recommendation in suspending the attorney from the practice of law for six months for this and other violations. *In re Compton*, MT 96-545 (1997).

Misrepresentation to the court. The Attorney represented one party in a domestic dissolution. The other party was not represented. The former spouses executed a settlement agreement in October 1993. In February 1994, the parties met with the attorney again and discussed a modified settlement agreement. The unrepresented party signed the modification prepared by the attorney, but the client did not. The attorney told the unrepresented party that the modified agreement would be presented to the court. Four days later, the attorney appeared before the court and presented the October 1993 agreement without mentioning the modified version and represented the agreement was the full and final settlement of all issues. The unrepresented party was not present at the hearing. The court later determined what had happened and held the attorney in contempt. The Commission on Practice found the attorney’s conduct to violate Rule 3.3, MRPC, and other rules of conduct. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for violating Rule 3.3 and other misconduct. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney’s petition for reinstatement.)

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence, unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Advising client to not comply with court-ordered search warrant obstructed law enforcement's access to evidence. Attorney was called to a crash site involving his girlfriend, who was being investigated for potential felony criminal endangerment and several misdemeanor charges. His girlfriend had been driving while under the influence of alcohol with two minor children in the vehicle, one of which was the attorney's child. After the girlfriend refused to provide a breath or blood sample, the highway patrol trooper obtained a telephonic search warrant to conduct a blood draw and transferred her to the detention center where she was placed in an ambulance. When the attorney arrived, he advised he was representing his girlfriend and requested to see the search warrant. He thereafter advised his girlfriend to not provide a blood sample, and she so refused, resulting in an Obstructing a Peace Officer charge against her. The attorney was also charged with Misdemeanor Obstructing a Peace Officer, was convicted by jury, and received a six-month deferred imposition of sentence with conditions, which was affirmed on appeal. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, concluding the attorney violated Rule 3.4(a), MRPC, for unlawfully obstructing law enforcement's access to evidence when he advised his girlfriend to not comply with the court-ordered search warrant to obtain her blood sample. After the attorney filed objections and ODC responded, the Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety and suspended the attorney from practicing law for 30 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 3.4(a) and 8.4(b), MRPC. *In re James Gardner*, MT PR 21-0100 (2021).

Eliciting false witness testimony at trial. Attorney was hired to pursue a legal malpractice claim against her clients' former attorney for failing to timely pursue their medical malpractice claim after their infant son died. During trial, a defense witness rebutted the attorney's claim that he had consulted with the defendant attorney as an economic loss expert regarding the medical malpractice claims. The attorney knew her claim was false when she made it at trial and attempted to elicit testimony from her own witness to support her false claim after feeding her witness the false information. The attorney made no attempt to correct the record even after rebuttal witness testimony contradicted her claim. A defense verdict was returned, and the defendant was awarded sanctions against the attorney for the expense of calling the rebuttal witness. After a formal hearing, COP concluded the attorney violated Rule 3.4(b), MRPC, by falsifying evidence or counseling or assisting a witness to testify falsely. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.4, 1.5(a), 3.3(a), 3.4(b), and 8.4(c), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 19-0017 (2020).

Failure to comply with disciplinary order. Attorney had been disciplined in a previous disciplinary matter for violating Rules 1.1, 1.3, 1.4, 8.1(b), 8.4(c), 1.15, and 1.18, MRPC, which resulted his appearance before the Montana Supreme Court for public censure, and a two-year probation with certain conditions. The attorney appeared for the public censure but failed to comply with any probationary terms and conditions as ordered by the Court in violation of Rule 3.4(c), MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court concluding the attorney violated Rules 3.4(c), 8.1, and 8.4(c), MRPC, for this and other misconduct. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended for not less than seven months to run concurrent with his suspension in PR 19-0444 for violating Rules 3.4(c), 8.1, and 8.4(c), MRPC. *In re Patrick Begley*, MT PR 19-0023 (2020).

Failure to timely and promptly produce discovery. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, acknowledging she could not successfully defend herself against the allegations that she violated Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC, and the following facts as alleged. The attorney agreed to act as local counsel and assist an Oregon attorney to pursue his client's claims against an accounting firm for alleged misconduct regarding investment and financial advice that resulted in significant financial damages to the client. After unsuccessful mediation, the attorney was retained by five other clients to pursue similar claims against the accounting firm. In total, seven plaintiffs pursued separate claims totaling nearly \$15 million of investments. The accounting firm and its insurer made a global settlement offer binding on all seven plaintiffs for \$4.65 million. All plaintiffs agreed to the offer to be distributed on a *pro rata* basis. After settlement, the attorney began pursuing bad faith claims against the insurer for her first client. During the bad faith litigation, a settlement spreadsheet breaking down the pro rata disbursement of settlement proceeds to each client was not timely provided in discovery in violation of Rule 3.4(d), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and recommended the Court impose the agreed upon discipline. The Supreme Court

accepted and adopted COP's Recommendation and ordered the attorney appear before the Court for public censure, suspended her from practicing law for 90 days, and ordered her to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.7, 1.8(g), and 3.4(d), MRPC. *In re Linda Deola*, MT PR 16-0714 (2019).

Failure to attend pre-trial conference knowing disobedience of obligation under rules of tribunal; failing to make reasonably diligent efforts to respond to discovery. Attorney represented his client *pro bono* in a debt collection action, to which he filed counterclaims transferring jurisdiction to district court, seeking \$650,000 in damages. He sued the debt collector and the creditor, alleging credit defamation and violations of the Fair Debt Collection Practices Act and Montana Consumer Protection Act. Defendants counter-claimed for breach of contract and unjust enrichment. The lawsuit was contentious due to the attorney's conduct. He failed to attend the pre-trial conference without notifying the court or opposing counsel and disregarded opposing counsel's attempts to stipulate to a scheduling order in the alternative. One defendant's motion for sanctions alleged vexatious litigation, specifically citing the attorney's failure to participate in producing a stipulated schedule, failure to attend pretrial conference, failure to respond to the summary judgment motion, evasive discovery responses, and unnecessarily creating expense. During his client's deposition, the attorney repeatedly made baseless objections and engaged in continuous and outrageous obstructionist behavior forcing defense counsel to move to compel discovery. After a formal hearing, COP concluded the attorney violated Rule 3.4(c), MRPC, by knowingly disobeying an obligation under the rules of a tribunal when he failed to attend the pre-trial conference without justifiable cause or efforts to alert the court or counsel, or to cooperate in the preparation of a scheduling order; and Rule 3.4(d), MRPC, by failing to make reasonably diligent efforts to comply with opposing parties' discovery requests. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted and, for this and other misconduct, indefinitely suspended the attorney from practicing law for not less than seven months and pay costs of the disciplinary proceedings for violating Rules 3.1, 3.4(c), and 3.4(d), MRPC. *In re Terrence Wallace*, MT PR 17-0245 (2018).

Disobeying rules of a tribunal when failing to comply with MRLDE notice requirements. Attorney was retained to represent his client in his intent to divorce his wife. The attorney filed the Petition for Dissolution but failed to have the wife served. While the dissolution was pending, the Montana Supreme Court suspended the attorney from practicing law for sixty days in another disciplinary matter and ordered him to comply with the notice requirements per the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE). Almost one year later, the client retained the attorney to represent him regarding misdemeanor and felony drug charges and paid him an additional \$3,500. The attorney resolved the misdemeanor case then appeared with his client at his arraignment in his felony case. The day before the omnibus hearing, the Montana Supreme Court indefinitely suspended the attorney for not less than seven months in another disciplinary matter. The attorney was again required to notify his clients, the courts, opposing parties, etc. of his second suspension, but he failed to comply in his client's cases. The dissolution case was dismissed for lack of action but not until after the attorney's suspension began. The attorney acknowledged he owed his client a refund of \$850 in unearned fees. After a formal hearing, COP concluded the attorney violated Rule 3.4(c) by disobeying his obligations under the rules of a tribunal when he failed to comply with the notice requirements of the

MRLDE related to his suspension. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney from practicing law for not less than seven months, ordered him to pay \$850 in restitution plus interest to his former client, and pay costs of the disciplinary proceedings accepted for violating Rules 1.3, 1.16(d), 3.4(c), and 8.1(b), MRPC. *In re Brian Kohn*, MT PR 17-0234 (2018).

Knowingly disobeying court's order to not file pleadings. Attorney filed a federal lawsuit on behalf of her and her law firm. The federal judge advised her she could not represent her firm because she admittedly was a witness, and she subsequently obtained new counsel. The defendants filed a Motion for Protective Order, and the attorney prepared her own response brief for her counsel to file. He disagreed with her position because it was not meritorious and refused to file it. The attorney advised the judge she did not object to counsel's withdrawal because he was incompetent and refused to file the brief that she had ready to file. That same day, the attorney logged into her e-filing account and filed a Notice to Court and an Affidavit with a proposed response brief attached, listing her counsel as Plaintiffs' attorney and indicating he was the attorney executing the documents. In her Affidavit, the attorney stated she filed it for the limited purposes of addressing her counsel's untimely withdrawal and unethical actions by refusing to file her response brief. Counsel later testified he did not sign the proposed brief and refused to file it. New counsel appeared on Plaintiffs' behalf, and a hearing was held the next day. The attorney admitted her previous counsel did not sign the proposed brief and she failed to advise the court of the same. The judge found she filed the brief for the purpose of presenting her arguments to the Court. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Order of Discipline wherein it concluded the attorney violated Rule 3.4(c) for knowingly disobeying an obligation under the rules of a tribunal by filing the notice, affidavit and brief after the court ruled she could not file any pleadings. For this and other misconduct, COP ordered the attorney be publicly admonished by the COP and pay costs of the disciplinary proceeding for violating Rules 3.3(a), 3.4(c), and 8.4(c), MRPC. *In re Tina L. Morin*, MT PR 17-0254 (2018).

Failure to respond to discovery requests. Attorney represented the Montana Public Employees Association (MPEA) for several years. He advised the City of Whitefish that MPEA was going to pursue an appeal through the grievance process on behalf of a collective bargaining unit member. When MPEA's executive director inquired about the status, the attorney repeatedly assured him the matter was progressing, and he was defending MPEA in court and would prevail. The attorney failed to do so and failed to make reasonably diligent efforts to comply with legally proper discovery requests. After ODC filed a Complaint, the attorney failed to file an Answer, deeming all allegations admitted. After a hearing, COP concluded the attorney failed to make reasonably diligent efforts to comply with legally proper discovery requests in violation of Rule 3.4(d), MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for a period of not less than 7 months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b) and 8.4(c), MRPC. *In re Carter Picotte*, MT PR 16-0446 (2017).

Failure to adequately respond to discovery requests or supplement responses. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating Rule 3.4(d) in one case for failing to adequately respond to discovery then failing to respond or timely respond to defense counsel's requests for supplementation. For his continued unresponsiveness, his client was sanctioned and his claims for loss of earnings, earning capacity, and earning opportunity, and future medical expenses were stricken. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be publicly censured by the Court and to pay costs of the disciplinary proceedings. *In re David S. Freedman*, MT PR 16-0239 (2016).

Testifying falsely; failing to comply with court orders. Attorney filed a lawsuit against an electric company seeking damages for property loss after the electric company terminated services to a townhouse. Despite his assertion, he did not own the townhouse. He claimed \$100,000 in damages to the townhouse and \$40,000 to his personal property. In deposition testimony, the attorney admitted he held no interest in the townhouse and agreed to amend his pleading. His amendment changed his assertion of "owned and occupied" to "occupied and paid for" the townhouse. During discovery, he provided inaccurate and untruthful information regarding his alleged damages, identity of damaged property, and his ownership in the townhouse. During litigation, the district court found the attorney in contempt for failure to comply with a sanctions order. After investigation, the electric company filed a second motion for sanctions based upon the attorney's false damages claims. The district court determined he overstated the amount of damages by at least \$18,700 in an attempt to obtain a larger settlement or damages award and dismissed his claims as an appropriate sanction. The attorney appealed, misrepresenting in his notice that no hearings were ever held, thus no transcripts were available. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation, which the Court adopted. The Montana Supreme Court ordered the attorney be suspended from the practice of law for 60 days and ordered to pay costs of the disciplinary proceedings for violating Rules 3.1(a), 3.4(b) and (c), 8.4(c) and (d), MRPC. *In re Larry G. Schuster*, MT PR 15-0264 (2016).

Failure to comply with Order of Discipline. In a prior disciplinary matter, the attorney's license to practice law was indefinitely suspended for a minimum of two years for misconduct relating to two matters (MT PR 14-0055 and PR 14-0245). He was also ordered to pay \$4,495.29 in restitution to the subject buyer in a real estate transaction within six months of the Order of Discipline but failed to do so. After a formal hearing, COP issued an Order Imposing Discipline for the attorney's failure to comply with the Supreme Court's previous Order of Discipline, rationalizing that a Letter of Admonition from COP would suffice given the attorney's license status. For violating Rule 3.4(c), MRPC, the attorney was publicly admonished in writing from the COP and ordered to pay costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 15-0257 (2016).

Failing to prepare and submit proposed orders as directed; making frivolous discovery requests and failing to comply with opposing party's discovery requests. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme

Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board made several findings, including he knowingly disobeyed his obligation under the rules of a tribunal by failing to prepare and approve orders of the court as directed; and, he made frivolous discovery requests and failed to make reasonably diligent efforts to comply with the former clients' legally proper discovery requests. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court suspended the attorney from practicing law in Montana for a period of nine months for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

Knowingly disobeying a court order to appear at trial. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 3.4(c) and 3.5(c), MRPC. Specifically, he admitted emailing the judicial assistant to the district court judge presiding over his public defender client's case involving two felony and two misdemeanor charges, stating "...Neither I nor [my client] will show up if the judge refuses to vacate the trial set for July 8, and he can throw my ass in jail for contempt if he chooses." He admitted his intent was to prevent the trial from going forward. The judge vacated trial and ordered the attorney to appear and show cause why he should not be held in contempt. At the hearing, the judge held the attorney in contempt, fined him \$250, and ordered him to submit a brief regarding his misconduct. Following a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order concluding the attorney violated Rule 3.4(c) by engaging in conduct intended to disrupt a tribunal and, for this and other misconduct, ordering he receive a public admonition by COP and pay costs of the disciplinary proceedings for violating Rules 3.4(c) and 3.5(c) MRPC. *In re Mark A. Epperson*, MT PR 16-0025 (2016).

Failure to abide by discovery procedures; failure to comply with hearing examiner orders; failure to respond to discovery requests. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. Specifically, he admitted violating Rule 3.4(d), MRPC, while representing two clients in their cases before the Peace Officers Standards and Training ("POST") Council when he failed to follow applicable Rules of Procedure as ordered by the hearing examiner without lodging proper objections; failed to meet required deadlines or appear at scheduled proceedings; failed to abide by pre-hearing discovery procedures; and failed to comply with the hearing examiner's orders and respond properly to discovery requests. He failed to seek judicial review of the POST Council or Board of Crime Patrol's respective decisions regarding one client at his client's direction. He did request judicial review in his second client's matter, but he failed to serve it, as instructed by his client. Ultimately, one client's POST certificate was permanently revoked, and the other client's POST certificate was suspended for 15 years. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney's *Conditional Admission and Affidavit of Consent* and, for this and other misconduct, ordered the attorney be publicly admonished by the Commission and pay the costs of the disciplinary proceedings for

violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. *In re Edward G. Chester*, MT PR 14-0475 (2015).

Failing to comply with discovery requests; filing frivolous motions and appeals; misrepresentations regarding estate value. (Reciprocal Discipline) Attorney was disbarred by the Washington Supreme Court for violating Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d) of the Washington Rules of Professional Conduct by his misconduct arising out of litigation involving the probate of his mother's estate wherein he was the personal representative. Even after he was removed as personal representative, he continued to file several frivolous appeals and subsequent litigation resulting in four contempt findings and sanctions against him totaling \$138,000. He knowingly and with dishonest intent violated the rules, causing actual injury to other heirs and the administration of justice. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court ordered reciprocal discipline and disbarred the attorney from practicing law in Montana. *In re Russell K. Jones*, MT PR 15-0073 (2015).

Failure to respond to discovery requests and motion to compel; failure to timely, or at all, assert and/or file claims. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC. Specifically, he admitted he failed to respond to defense counsel's discovery requests in relation to the lawsuit he filed on his client's behalf to pursue damages caused by a motor vehicle accident. He subsequently failed to respond to defense counsel's motion to compel discovery responses, resulting in his client being ordered to pay \$875 for defendant's attorney fees and costs and deeming the requests for admission admitted. The attorney subsequently served defense counsel with his client's unsigned discovery responses to the remaining discovery requests. He failed to respond to defense counsel's second discovery requests. He did not bring a claim against the estate for the at-fault driver within one year after his death, as required by statute. For over five years, during the representation, the attorney failed to conduct any discovery, failed to bring a derivative claim on behalf of his client's wife, failed to assert a claim for underinsured motorist benefits, failed to keep his client informed about the status and/or existence of the discovery requests, did not always respond to his client's inquiries about the status of his case, and failed to advise his client about the Order to Compel and resulting sanctions. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.1, 1.3, 1.4, 3.2, and 3.4, MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for two years, subject to specific terms and conditions, pay \$875 plus interest in restitution to his former client, and pay the costs of the disciplinary proceedings. *In re Jeffrey L. Sutton*, MT PR 13-0069 (2014).

Failure to respond to discovery requests; failure to respond to motion to compel. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was retained by the personal representative of an estate to handle the probate of a contested will. The contesting party served the attorney with its first set of discovery requests, to which he failed to respond, despite his client's numerous letters reminding him to do so. A motion to compel was filed, to which the attorney also failed to respond. Thereafter, his client terminated his representation, and the district court issued an order compelling her to respond to the discovery requests. The attorney admitted that, should this matter proceed to a contested hearing, he could not successfully defend himself against charges that:

in violation of Rule 1.1, MRPC, he failed to competently represent his client; in violation of Rule 1.3, MRPC, he failed to act with reasonable diligence and promptness in representing his client; in violation of Rule 3.4(d), MRPC, he failed to make a reasonably diligent effort to comply with a legally proper discovery request(s) by an opposing party; in violation of Rule 1.4, MRPC, he did not promptly reply to his client's reasonable requests for information and/or failed to keep his client reasonably informed about the status of the matter; in violation of Rule 1.5(b), MRPC, he failed to communicate in writing the scope of his representation and the basis or rate of his fees and expenses for which his client would be responsible, before or within a reasonable time after commencing the representation. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for a period of five years, subject to certain conditions, and pay the costs of the disciplinary proceedings. *In re Stephen H. Dalby*, MT PR 12-0059 (2013).

Knowingly disobeying obligations under the rules of a tribunal. Attorney's license to practice law was placed on inactive status with the State Bar of Montana in July 2010 for noncompliance with the Montana Supreme Court's Rules for Continuing Legal Education. He was notified of his placement on inactive status the following day and was prohibited from practicing law. After petitioning the Montana Supreme Court, his law license was placed on active status in December 2010 upon payment of fees. While on inactive status, the attorney represented clients in several court cases. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.16(a), 3.4(c) and 5.5, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 30 days and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety. *In re Clinton H. Kammerer*, MT PR 11-0317 (2012).

Failure to comply with scheduling deadlines; failure to respond to discovery; failure to appear at scheduling and status conferences; failure to show cause; failure to communicate with opposing counsel resulting in suspension of her client's professional license; failure to file support brief. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to every allegation of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4, MRPC. The attorney was hired to represent a client regarding a professional licensing matter before Montana Department of Labor and Industry (DLI). The complaint alleged the attorney failed to comply with Scheduling Order deadlines, failed to respond to discovery, failed to appear at a scheduling conference, failed to appear at a telephone status conference, failed to provide written explanation for her failures to appear, and failed to follow-up with DLI counsel regarding a proposed stipulation resulting in a default entered against her client and a two-year minimum indefinite suspension of her client's license. After the attorney filed a motion to alter or amend the default order, she failed to file a brief, and her involvement in the matter ended. The attorney admitted to struggles with depression and alcoholism and she should have referred her client to other counsel. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be suspended from the practice of law for not less than six months to run consecutive to the suspension previously imposed in another matter, comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 12-0196 (2012).

Failure to respond to discovery requests. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re F. Ron Newbury*, MT PR 10-0617 (2012).

Failure to respond to court order; failure to comply with court order. (Reciprocal Discipline) The California State Bar filed its Notice of Disciplinary Charges alleging the following. Attorney was appointed by the California Supreme Court as habeas corpus/executive clemency counsel of record for a criminal client. The appointment was approved under a fixed fee progress payment schedule, wherein the Court paid the attorney for her work performed in the case. The Court authorized one payment in the amount of \$39,360, which was transmitted to the attorney. Nearly two years later, it approved a second payment to the attorney in the amount of \$43,560, which was paid. Two months later, the attorney filed a motion to withdraw based on a conflict of interest, but the Court denied her motion. Nearly three months later, she filed a second motion to withdraw based on health reasons, which the Court granted and subsequently ordered the attorney to show cause whether she should be ordered to reimburse the Court the second payment she received. The attorney did not respond to the Court's Order until over a year later and willfully disobeyed a court order by not timely responding or providing an accounting of her habeas corpus work performed in violation of Rules 3.4(c) and 8.4(d), MRPC. She signed a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension, wherein she agreed to a one-year stayed suspension, probation for two years with certain conditions, 90-day actual suspension with certain conditions, and payment of costs.

The California Supreme Court approved the Stipulation and its terms, effectively staying a one-year suspension, placing her on probation for two years, suspending her for 90 days, and ordering her to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), suspending the attorney from the practice of law in Montana for a period of 90 days and ordering her to pay costs. *In re Phyllis Moore Quatman*, MT PR 11-0358 (2011).

Unauthorized practice of law; knowingly disobeying obligations under the rules of a tribunal.

Attorney was placed on inactive status for non-compliance with Continuing Legal Education (“CLE”) requirements in June 2008, and in July 2008, he was administratively suspended for non-payment of dues. After being placed on inactive status and/or administratively suspended, the attorney represented clients in two Montana district court cases and in three Billings Municipal Court cases prior to the reinstatement of his law license to active status. The ODC filed a formal complaint alleging the attorney engaged in the unauthorized practice of law and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 3.4(c) and 5.5, MRPC. The COP recommended the attorney receive a private admonition, be placed on probation for two years, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP’s Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, and be placed on probation with the condition that he not petition for reinstatement to active status with the State Bar of Montana. *In re Chris J. Nelson*, MT PR 10-0172 (2011).

False statements to a tribunal; disobeying obligations under the rules of a tribunal.

Attorney was hired by his client to discuss her pending foreclosure and potentially filing bankruptcy. She informed him that she had two mortgages on her home, she was delinquent on her payments, her home was in foreclosure, and she was attempting to sell her home but had been unsuccessful. He was also aware that she had been sued by two creditors and had two judgment liens against her property. Two days after their initial meeting, the attorney presented her with a Purchase and Sale Agreement and a Contract for Deed, which he drafted, for the sale of her home to him. Under the Agreement, no money would be paid to the client for either her real property or her personal property, which the attorney would acquire as part of the sale. Rather, the Agreement provided that the attorney would pay the arrearages on the first mortgage. The Agreement did not address the second mortgage, the lawsuits, or the judgments even though the attorney was aware of them. The Contract for Deed provided that he would assume the debt of the first mortgage by paying her directly – on a monthly basis – the necessary amount to cover her monthly mortgage obligation. The Agreement was signed at that time, but the Contract for Deed was not executed. Although the attorney and his client had agreed that he would not charge any fees for his services, the Contract for Deed provided that the value of his representation was \$1,500 and was included in the purchase price for the home. The attorney had his client make representations in the Agreement that he knew were false; specifically, that there were no legal actions pending which would affect title to the property. When he presented the Agreement to his client, he did not additionally present her with any document containing the necessary disclosures required for an attorney to enter into a business transaction with a client; he failed to obtain informed, written consent from his client to the transaction between them. One month later, the attorney filed a bankruptcy petition on his client’s behalf. He was not familiar with the

bankruptcy laws regarding judgments/liens on real property. Two lawsuits filed by her creditors were erroneously reported as judgments in the bankruptcy petition. In addition, he failed to file the motions to avoid the judgment liens which impaired his client's homestead equity; he was unaware that they should have been filed. The attorney made multiple other errors in the bankruptcy case. He failed to disclose his interest in purchasing his client's home to the bankruptcy court or to the bankruptcy trustee. One month after the first creditors meeting, the client told the attorney that she did not want to proceed with the Agreement because she didn't think it was fair to her; regardless, he continued with his efforts to purchase the home. The client was discharged in bankruptcy two months later; the Agreement had been revoked prior to the discharge. She later retained a new attorney to re-open her bankruptcy case to file a motion and homestead exemption to have the judgment liens avoided. The property was eventually sold at a trustee's sale. The attorney entered into a stipulation with the U.S. Bankruptcy Trustee wherein he voluntarily agreed to a one year suspension from the practice of law before any bankruptcy court. The attorney was subsequently administratively suspended for non-payment of dues and non-compliance with Continuing Legal Education requirements. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation; had a conflict of interest in that there was a significant risk his representation would be materially limited by his personal interests in his client's real property; failed to get his client's informed consent, in writing, to the terms of the transaction and the attorney's role in the transaction; prepared an Agreement with terms that were not fair or reasonable to his client; improperly acquired a propriety interest in property that was part of the subject matter of the bankruptcy case; knowingly made false statements of fact to a tribunal; and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.7, 1.8(a), 1.8(i), 3.3, and 3.4(c), MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, reimburse his former client for the cost of hiring a new attorney to complete the bankruptcy, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and suspended the attorney from the practice of law for an indefinite period of not less than seven months, ordered him to pay his former client the amount it cost to hire a new attorney to complete the bankruptcy, and pay the costs of the proceedings. *In re Darel A. Graves*, MT PR 10-0443 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a

period of not less than six months, be placed on probation, during which she must comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 10-0428 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Violation of disciplinary order. Attorney was retained to evaluate potential claims against an electrical contractor. The client paid a \$500 retainer. The issue with the contractor resolved, and the client terminated the attorney-client relationship. He requested the return of his file and a refund of his retainer; he subsequently requested an accounting of the fee. The attorney did not respond. The attorney failed to respond to the informal complaint filed against her with the ODC, despite ODC's requests for response. The attorney failed to notify opposing counsel of her suspension from the practice of law ordered by the Montana Supreme Court and failed to file an affidavit attesting to her compliance with the Court's disciplinary order. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney did not appear. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.16(d), 3.4, and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and disbarred the attorney from the practice of law in Montana and ordered her to pay the costs of the disciplinary proceedings. *In re Marla J. Drozdz*, MT PR 09-0383 (2010).

Failure to comply with discovery requests. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also

granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to file a response brief as ordered by the Court. Attorney was retained to defend a client in a lawsuit filed against her by her former landlord for damages to a rental property. At trial, the Court directed counsel to file briefs regarding the lease at issue. The attorney failed to file a brief or to respond to the Plaintiff's brief. The Court awarded the Plaintiff damages and attorney fees for over \$13,500 with interest. After the Judgment was entered, the client requested a copy of the brief the attorney filed on her behalf. He faxed the client a Brief in Opposition to Term Lease that included a Certificate of Service, indicating it had been mailed to opposing counsel. The brief was not filed with the Court nor did opposing counsel receive a copy. In this matter and in a separate matter, the attorney failed to respond to the informal complaint filed against him with the ODC, despite ODC's requests for response. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney appeared. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.3, 3.4(c), 8.4(c) and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and suspended the attorney from the practice of law in Montana for a period of 90 days and ordered him to pay the costs of the disciplinary proceedings. *In re Marvin E. Alback*, MT PR 09-0222 (2009).

Failure to file appellate brief, failure to comply with court orders. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana

Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Drafting false affidavit and submitting to various authorities, failure to act or disclose false information. Attorney was retained by a client to defend her against felony criminal charges of fabricating physical evidence and threats of other improper influence. The client was convicted. A few days after trial, the client faxed a document that she received and believed incriminated the victim of her crime and exculpated her. The attorney's paralegal persisted in wanting to send the fax to the prosecutor, and the attorney told her "I don't care what you do with it" so she faxed it. An investigator for the State of Montana initiated an investigation surrounding the creation and distribution of the fax. The State's investigation led to additional charges filed against the client for tampering with or fabricating physical evidence, which resulted in the State's search of the client's residence. The State then interviewed the attorney's paralegal, and she gave a statement to the prosecutor and the State's investigators. The attorney represented his paralegal during the interview. The paralegal made a number of false statements during the interview, and at no time during the interview did the attorney attempt to correct her or set the record straight. The attorney later drafted an affidavit for his paralegal to sign, which contained a number of false statements, including the fact that she sent the fax by mistake and that she did not advise anyone that she had sent the fax. The paralegal states the attorney advised her to make the false statements, and the attorney admits the affidavit contains at least one falsehood. The attorney represented to the district court, ODC and the Commission on Practice that the document was inadvertently faxed even though he admitted he told his paralegal that he didn't care what she did with the document. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 3.3, 3.4(b), 4.1(a), 8.1 and 8.4, MRPC and ordered the attorney receive a public censure and pay costs of the proceedings. *In re Hoovestal*, MT 05-094 (2007).

Contempt of court for failure to obey child support order. The attorney neglected to pay child support for several years. The Montana Supreme Court found clear and convincing evidence that the attorney failed to pay child support, continually violated child support orders issued by the district court, was found in contempt of court for doing so and did little to purge the contempt. The Montana Supreme Court found violation of Rule 3.4(c) for failing to obey the rules of a tribunal. The Court also found that the attorney violated RLDE 8A(7) by failing to "purge the contempt." The Court ordered that the attorney appear for public censure by the Court and that the attorney pay the costs of the disciplinary proceedings. *In re Turrin*, MT 05-459 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.2, 3.4, 3.5, and 8.4(d) in exchange for public censure and an assessment of expenses and costs of the proceedings. The Montana Supreme Court accepted the attorney's tendered admission. The Court ordered that the attorney be publicly censured by the Supreme Court of the State of Montana and be assessed with costs of the proceedings. *In re Truman*, MT PR06-0525 (2006).

Failure to communicate, act with diligence, and forward client materials. The client hired the attorney to pursue an action in United States District Court for the District of Montana. The attorney failed to keep the client informed of the status of the matter, failed to act with reasonable diligence in pursuing the client's rights and causes of action, failed to respond to discovery requests and attend his client's deposition, failed to file initial disclosures, and failed to notify the client that the attorney could no longer represent her, and, finally, failed to deliver the client's materials to her new attorney upon request. The Montana Supreme Court found clear and convincing evidence that the attorney violated MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4(c)–(d), and 1.16(d). The Court ordered the attorney indefinitely suspended from the practice of law for not less than one year. *In re Musick*, MT 05-607 (2006).

Failure to respond to disciplinary inquiries and return client's file. The attorney failed to respond to the complaint filed against him with the Office of Disciplinary Counsel (ODC) despite two requests for a response. The Commission on Practice ordered the attorney to appear and show cause why discipline should not be imposed. The attorney failed to appear at the show cause hearing as well. Further, the attorney failed to return a client's file despite the client's request and an order from the district court. The Montana Supreme Court found that the attorney failed to respond to disciplinary inquiries, failed to appear to show cause, and failed to return a client's file despite a court order. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.16(d), 3.4(c), and 8.1(b). The Court ordered the attorney be indefinitely suspended from the practice of law for not less than one year and be assessed with the costs of the disciplinary proceedings. *In re Moses*, MT 04-873 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.4(b), 4.1(a), 8.4(c), and 8.4(d). The Montana Supreme Court accepted the attorney's tendered admission and ordered that the attorney be disciplined with public censure, a 30-day suspension from practice, two years of probation, and an assessment of the costs of the disciplinary proceedings. *In re D'Alton*, MT PR06-0235 (2006).

Failure to pay costs assessed and respond to disciplinary inquiries. This annotation involves two complaints combined into one decision. The attorney was ordered by the Montana Supreme Court to pay the costs assessed in a previous disciplinary proceeding. The attorney began to pay

the assessed costs in a payment plan but stopped making payments with a \$1,000 balance remaining. The Office of Disciplinary Counsel (ODC) attempted twice to contact the attorney by letter with the second letter returned with no forwarding address. The Commission on Practice (COP) ordered the attorney to appear and show cause why he'd not responded. The attorney failed to appear or respond to the order. In the second cause, the attorney failed to respond to an informal complaint filed against him and failed to respond to ODC inquiries regarding the complaint. The COP again ordered the attorney to appear to show cause. The attorney again failed to appear. The Montana Supreme Court found clear and convincing evidence that the attorney had violated MRPC Rule 3.4(c) by failing to obey the Court's order assessing the costs of the prior disciplinary proceeding. The Court also found that the attorney violated MRLDE Rule 8A(6) by failing to respond to inquiries from the ODC and failing to appear to show cause pursuant to the orders issued by the COP. The Court ordered the attorney disbarred. The Court also ordered the attorney to pay the costs of the disciplinary proceedings. *In re Hussey*, MT 05-477 (2006).

Ignoring deadlines ordered by the Court. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. He regularly ignored deadlines established by Supreme Court Orders during his clients' appeals. One case was remanded by the Supreme Court for an appointment of substitute counsel because of the attorney's failure to appear. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 3.4(c), MRPC, and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Failure to notify court of disputed fees; misrepresentation of facts to bankruptcy court. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 3.4(c), MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Failure to comply with court order requesting opening brief. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting she violated Rule 3.4(c), MRPC, as well as other rules. The Montana Supreme Court accepted the attorney's admission and publicly censured her. She was also required to pay COP and ODC's costs of proceedings. *In re German*, MT 05-360 (2005).

Contempt conviction for failing to comply with court orders. The attorney admitted her misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 3.4(c), MRPC, in the course of her representation of a criminal defendant. The attorney repeatedly failed to comply with orders of

the District Court setting deadlines for work to be completed on her client's appeal. The misconduct became so severe the district judge held her in contempt of court and a different attorney was assigned to the appeal. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney for six months and publicly censured the attorney. *In re Drew*, MT 04-417 (2004).

Discovery violations. (Reciprocal discipline) Attorney admitted to violating Wyoming Rule of Professional Conduct 3.4(d) by failing and refusing to comply with numerous discovery obligations in a litigation matter. The Montana Supreme Court entered reciprocal discipline under RLDE 27 (2003) of a public reprimand for this and another violation. *In re Elworthy*, MT 04-284.

Practicing law while suspended. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rules 1.1, 1.3 and 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a year for this and other conduct violative of the MRPC. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC. After a formal complaint was filed, the attorney tendered his admission pursuant to Rule 26, MRLDE, for violating these rules and Rule 8.1 for failing to respond to disciplinary inquiries. The Commission recommended the Court adopt the attorney's tendered admission. The Court adopted the tendered admission and placed the attorney on probation for five years, subject to certain terms and conditions, including, but not limited to, resignation of his law license. *In re Wing*, MT 03-585 and MT 04-872 (2005).

Filing claim based on facts disputed by client. The attorney filed a complaint on behalf of two married couples alleging the defendant social workers and related organizations provided the plaintiffs poor and inaccurate marital advice, causing damage to their marital relations. In the context of a separate disciplinary action, one of the clients testified that she had informed the attorney that certain of the allegations contained in the complaint were untrue. The Commission brought a subsequent disciplinary action in connection with that testimony. The attorney admitted his misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 3.4, MRPC, by litigating an action after the client had communicated the invalidity of certain facts underpinning the action. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney (who was already indefinitely suspended) for an additional period of not less than nine months. *In re Sisler*, MT 01-557 (2002).

Frivolous discovery requests. The attorney repeatedly filed frivolous discovery requests, in violation of Rule 3.4, MPRC, according to the Commission on Practice's findings. The Montana Supreme Court indefinitely suspended the attorney for this and other misconduct. *In re Tierney*, MT 99-148 (2000).

Advising client to ignore court order. The attorney was hired to represent a client in a child support and custody proceeding. During the course of the proceeding, the client was directed by the court to file a financial affidavit. The attorney advised to client to ignore the court's order. The Commission found the attorney's conduct violative of Rule 3.4(c), MRPC. The Montana Supreme Court disbarred the attorney--who was indefinitely suspended at the time--for this and other misconduct. *In re Sapp-LeClair*, MT 97-608 (1998).

RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person except as permitted by law; or
- (c) engage in conduct intended to disrupt a tribunal.

Failure to attend hearing on motion conduct intended to disrupt tribunal. Attorney filed a civil lawsuit on his client's behalf, which was removed to federal court. The defendants filed motions for summary judgment, which the Court granted, and judgment was entered against the attorney's client. The attorney failed to appeal the summary judgment order, as his client directed. The client ultimately filed a *pro se* Notice of Appeal and later a Motion for Extension of Time, and the appeals court remanded the matter to district court to allow the judge to rule on the motion for extension of time. The judge set the matter for hearing, but the attorney failed to appear, resulting in the Court's Order to Show Cause, directing him to personally appear and show cause why he should not be held in contempt, sanctioned, or otherwise respond. The attorney appeared at the hearing and had no valid justification for failing to timely file the appeal notice or to appear at the hearing. After ODC filed its Complaint alleging violations of Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC, the attorney failed to file an Answer, deeming all allegations of the Complaint admitted. After a hearing, COP concluded the attorney's failure to attend the motion hearing demonstrated conduct intended to disrupt a tribunal in violation of Rule 3.5(c), MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. Considering the attorney's disciplinary history as an aggravating factor, the Supreme Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.2, 1.3, and 3.5(c), MRPC. *In re David S. Freedman*, MT PR 18-0034 (2018).

Conduct intended to disrupt a tribunal by subpoenaing the presiding judge. Attorney was retained to pursue an appeal in a domestic relations case, which the Supreme Court ultimately dismissed for the attorney's failure to file an opening brief. He then filed an untimely Rule 60 motion for relief in district court and a motion to disqualify the district court judge for his alleged bias, which the Supreme Court denied. The attorney issued a subpoena and served it on the presiding district court judge to be deposed in connection with the Rule 60 motion. The judge denied the Rule 60 motion, quashed the subpoena, and ordered the attorney to appear and show cause why his conduct did not violate Rule 11, M.R.Civ.P. After the show cause hearing, the judge sanctioned the attorney, which was affirmed by the Supreme Court. After a formal hearing, COP concluded the attorney violated Rule 3.5(c) for issuing a subpoena to the district court judge while he was the presiding judge in the litigation. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 3.1(a), 3.5(c), 8.2(a), and 8.4(d), MRPC. *In re Robert C. Myers*, MT PR 16-0245 (2017).

Engaging in conduct intending to disrupt a tribunal. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 3.4(c) and 3.5(c), MRPC. Specifically, he admitted emailing the judicial assistant to the district court judge presiding over his public defender client's case involving two felony and two misdemeanor charges, stating "...Neither I nor [my client] will show up if the judge refuses to vacate the trial set for July 8, and he can throw my ass in jail for contempt if he chooses." He admitted his intent was to prevent the trial from going forward. The judge vacated trial and ordered the attorney to appear and show cause why he should not be held in contempt. At the hearing, the judge held the attorney in contempt, fined him \$250, and ordered him to submit a brief regarding his misconduct. Following a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order, concluding the attorney violated Rule 3.5(c) by knowingly disobeying an obligation under the rules of a tribunal and, for this and other misconduct, ordered he receive a public admonition by COP and pay costs of the disciplinary proceedings for violating Rules 3.4(c) and 3.5(c), MRPC. *In re Mark A. Epperson*, MT PR 16-0025 (2016).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.2, 3.4, 3.5, and 8.4(d) in exchange for public censure and an assessment of expenses and costs of the proceedings. The Montana Supreme Court accepted the attorney's tendered admission. The Court ordered that the attorney be publicly censured by the Supreme Court of the State of Montana and be assessed with costs of the proceedings. *In re Truman*, MT PR 06-0525 (2006).

Letter constituted ex-parte communication/disruptive to deliver shortly before hearing. The attorney representing a defendant in a homicide case was unhappy with a discovery order that was contended to be prejudicial to the defendant. The attorney accused the judge of bias shortly before the trial was to begin. Following a hearing at which the judge was found to have acted properly, the attorney hand-delivered a letter to the judge in his chambers shortly before a hearing in the case. The letter requested the judge recuse himself from the case. The Commission chastised the attorney for his conduct, writing he "should have used a scalpel, not a meat axe" in his reaction to the judge's ruling and made an objection in writing. The Montana Supreme Court adopted the Commission findings that found the attorney violated Rule 3.5(b) and (c), MRPC, for the ex-parte communication with the judge and that the delivery of the ex-parte letter to the judge minutes before the hearing was scheduled to begin was conduct intended to disrupt the tribunal. The Court publicly censured the attorney for his professional misconduct. *In re Albers*, 98-011 (2000). The Montana Supreme Court rejected the attorney's constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

RULE 3.6: TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Extrajudicial Statements. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violation of Rule 3.6(a), MRPC. The Montana Supreme Court accepted his admission and publicly censured the attorney. He was further ordered to pay the COP and ODC's costs of proceedings. *In re Jones*, MT 05-076 (2005).

RULE 3.7: LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

(No annotations are available relating to violations of Rule 3.7, MRPC.)

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
 - (1) the information sought is not protected from disclosure by any applicable privilege;
 - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule consistent with the Confidential Criminal Justice Information Act.
- (g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
 - (1) promptly disclose that evidence to an appropriate court or authority; and
 - (2) if the conviction was obtained in the prosecutor's jurisdiction:
 - (i) promptly disclose that evidence to the defendant unless a court authorizes delay; and
 - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Failing to timely disclose exculpatory information. Attorney submitted an *Amended Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted he violated Rule 3.8(d), MRPC, by failing to make a timely disclosure of exculpatory information to a criminal defendant during the prosecution of drug offenses as an Assistant United States Attorney. After a Rule 26 hearing, COP issued its Acceptance of Amended Rule 26 Conditional Admission and Affidavit of Consent, Order for Discipline. For this and other misconduct, COP ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings for violating Rules 3.3(a) and 3.8(d), MRPC. *In re James Seykora*, MT PR 18-0213 (2018).

RULE 3.9: ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

(No annotations are available relating to violations of Rule 3.9, MRPC.)

OTHER THAN CLIENTS

Rule 4

RULE 4.1: TRUTHFULNESS IN STATEMENT TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

False statements to third parties. Attorney represented the Montana Public Employees Association (MPEA) for several years. In handling a grievance filed against the City of Bozeman, he misrepresented the facts, the delay, cause for delay, and his actions to both his client, MPEA, and the grievant. At the formal disciplinary hearing, the attorney admitted he was dishonest with MPEA and the grievant and misrepresented the facts in violation of Rules 4.1 and 8.4, MRPC. After the hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 4.1, and 8.4, MRPC. *In re Carter Picotte*, MT PR 16-0319 (2017).

Making false statement to third party regarding probate case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In a probate matter, the attorney lied to third parties regarding the status and circumstances surrounding the probate, and the Estate's assets and the distribution thereof. By this conduct, the attorney violated Rules 4.1, and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Misrepresentations to third party. Attorney was paid \$5,000 by his client's brother to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client. He failed to notify him that he did not intend to pursue his post-conviction relief petition, and he misrepresented to his client's brother that he had prepared and filed the petition and would provide proof thereof. After a formal hearing, COP concluded the attorney's misrepresentations to his client's brother violated Rule 4.1, MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Drafting false affidavit and submitting to various authorities; failure to act or disclose false information. Attorney was retained by a client to defend her against felony criminal charges of fabricating physical evidence and threats of other improper influence. The client was convicted. A few days after trial, the client faxed a document that she received and believed incriminated the victim of her crime and exculpated her. The attorney's paralegal persisted in wanting to send the fax to the prosecutor, and the attorney told her "I don't care what you do with it" so she faxed it. An investigator for the State of Montana initiated an investigation surrounding the creation and distribution of the fax. The State's investigation led to additional charges filed against the client for tampering with or fabricating physical evidence, which resulted in the State's search of the client's residence. The State then interviewed the attorney's paralegal, and she gave a statement to the prosecutor and the State's investigators. The attorney represented his paralegal during the interview. The paralegal made a number of false statements during the interview, and at no time during the interview did the attorney attempt to correct her or set the record straight. The attorney later drafted an affidavit for his paralegal to sign, which contained a number of false statements, including the fact that she sent the fax by mistake and that she did not advise anyone that she had sent the fax. The paralegal states the attorney advised her to make the false statements, and the attorney admits the affidavit contains at least one falsehood. The attorney represented to the district court, ODC and the Commission on Practice that the document was inadvertently faxed even though he admitted he told his paralegal that he didn't care what she did with the document. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 3.3, 3.4(b), 4.1(a), 8.1 and 8.4, MRPC and ordered the attorney receive a public censure and pay costs of the proceedings. *In re Hoovestal*, MT 05-094 (2007).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.4(b), 4.1(a), 8.4(c), and 8.4(d). The Montana Supreme Court accepted the attorney's tendered admission and ordered that the attorney be disciplined with public censure, a 30-day suspension from practice, two years of probation, and an assessment of the costs of the disciplinary proceedings. *In re D'Alton*, MT PR06-0235 (2006).

RULE 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Communication regarding subject matter with represented person without attorney's consent.

Attorney represented the husband as an interested party in appellate and post-remand matters in his wife's pending guardianship proceedings. His wife was judicially determined to be incapacitated and was appointed guardians and an attorney, who also had the powers and duties of a guardian *ad litem*. The attorney's client was deemed not suitable to be his wife's guardian, and orders regarding visitation and attorneys' fees awards had been entered. The attorney was unsuccessful in obtaining additional visitation rights for her client, in challenging the orders by which her client was not appointed his wife's guardian, and in challenging the award of spousal support and attorney fees. After the district court's orders were affirmed on appeal, the attorney sought surrogates, including Disability Rights Montana ("DRM") and another attorney, to represent her client's wife without disclosing to them she was already represented by a court-appointed attorney. The surrogate attorney contacted her purported new client on more than one occasion without the knowledge or consent of her court-appointed attorney, the guardians' counsel, or the district court. The surrogate attorney also entered into a limited scope attorney-client agreement with the husband. The husband's first attorney, who consented to the representation, would remain as the sole point of communication between her client and the surrogate; she also assisted the surrogate in drafting pleadings. The attorney used the surrogate attorney's purported representation of the wife to pursue expanded visitation for the husband. After a formal hearing, COP concluded the attorney used the surrogate attorney to communicate about the subject of a representation with a person she knew was represented by another attorney in the matter without the consent of the other attorney, authorization by law, or a court order in violation of Rule 4.2, MRPC. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. For this and other misconduct, the Court indefinitely suspended the attorney for a minimum of seven months and ordered her to pay costs of the disciplinary proceedings for violating Rules 4.2, 8.4(a), and 8.4(d), MRPC. *In re Tina L. Morin*, MT PR 17-0448 (2019).

Communicating with represented person without counsel's knowledge or consent. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. An assistant attorney general for the State of Montana charged and prosecuted a criminal defendant for felony criminal endangerment. The complaint alleged the attorney requested a Montana Highway Patrol trooper to interview another defendant, who was also involved in the incident, while he was represented by counsel and without his counsel's knowledge or consent. Consequently, the defendant gave the trooper a written statement about the incident without his counsel's knowledge or consent. Likewise, the attorney also spoke directly with the defendant on a separate occasion without his counsel's knowledge or consent. The complaint alleged the attorney violated Rule 4.2, MRPC, by requesting the trooper to

communicate with the defendant and by communicating directly with the defendant without his counsel's knowledge or consent. The attorney admitted to material facts of the Complaint and to violating Rule 4.2, MRPC, by communicating with the defendant without his counsel's knowledge or consent. Following a Rule 26 hearing, COP issued its Order of Discipline wherein it ordered the attorney receive a public admonition to be administered by COP, and pay the costs of the disciplinary proceedings for his violation of Rule 4.2, MRPC. *In re Joel M. Thompson*, MT PR 11-0318 (2012).

Communication with represented spouse in a dissolution. Attorney represented husband in a contested dissolution. The wife had her own counsel of record. During the course of the dissolution, the attorney spoke with the wife regarding a temporary order of protection she had obtained pro se, and criminal charges she had filed against him. The attorney then made a conference call with the wife to the county attorney's office advising them that the wife had dropped the divorce and TRO and requested that the criminal charges be dropped. The Commission determined that these matters were closely related to the divorce and that the attorney therefore violated Rule 4.2, MRPC. For this and another violation of the MRPC, the Montana Supreme Court indefinitely suspended the attorney for a period of not less than three months. In a subsequent order, the Court indicated that because the suspension was indefinite, the attorney would be required to petition for reinstatement. *In re Sisler*, MT 00-125 (2001).

Use of an intermediary to discuss subject of representation with party known to be represented by another lawyer. A mother and daughter owned property as joint tenants. The mother brought an action against the daughter seeking a partition. The mother orally fired her lawyer, but he remained counsel of record. The attorney who was the subject of this disciplinary proceeding represented the daughter. The daughter's lawyer prepared a stipulation for dismissal, a proposed order for the judge and a quitclaim deed giving title to the property to the daughter. The daughter obtained the mother's signature without the mother having the benefit of counsel and the attorney presented the stipulation to the court, which approved the dismissal. The Commission on Practice found that the attorney violated Rule 4.2, MRPC, by using an agent (the daughter) to communicate about the subject of the representation with a party known to be represented by another lawyer. The Commission wrote that the attorney "did indirectly what rule 4.2 forbade him from doing directly." The Montana Supreme Court publicly censured the attorney. *In re Cummins*, MT 99-599 (2000).

RULE 4.3: DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

(No annotations are available relating to violations of Rule 4.3, MRPC.)

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Conduct causing delay or burden to opposing party. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board made several findings, including using means that had no other purpose than embarrassing, delaying, or burdening the former clients. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court imposed reciprocal discipline and suspended the attorney from practicing law in Montana for not less than nine months for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

LAW FIRMS AND ASSOCIATIONS

Rule 5

RULE 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer within a firm shall be responsible for another lawyer in the firm's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies or ignores the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(No annotations are available relating to violations of Rule 5.1, MRPC.)

RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if the lawyer acts in accordance with the supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(No annotations are available relating to violations of Rule 5.2, MRPC.)

RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies or ignores the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Failure to ensure employees' conduct consistent with lawyer's professional responsibilities. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, admitting he could not successfully defend himself against allegations he violated Rules 5.3 and 5.5, MRPC. The Complaint alleged he violated Rule 5.3 by failing to ensure his office had policies in effect to assure his employees' conduct would be compatible with his professional obligations and by failing to make efforts to assure his employees' conduct was, in fact, compatible with his professional obligations. Following a Rule 26 hearing, COP issued its Order Approving Rule 26 Tendered Admission and Final Order of Discipline accepting the attorney's *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the Commission and pay the costs of the disciplinary proceedings for violating Rules 5.3 and 5.5, MRPC. *In re John W. Parker*, MT PR 15-0625 (2016).

Failure to ensure employees' conduct complies with lawyer's ethical obligations. Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or

that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The checks were deposited into the attorney's trust account but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Failure to properly train paralegal. (Reciprocal Discipline) The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Failure to properly supervise. Attorney was retained to handle several bankruptcies on behalf of his client and the five entities his client controlled. His client paid him a \$30,000 retainer. The attorney filed inaccurate and/or incomplete bankruptcy documents, failed to seek approval of his representation from the bankruptcy court, and failed to retain copies of the electronically filed documents, as required. The attorney had a conflict of interest in representing both his client and his client's five entities because their interests were either directly adverse and/or his

representation could be materially limited by his responsibility to the other client. He failed to explain the conflict of interest issue to his client, failed to properly discuss the bankruptcy documents with his client, and failed to keep his client reasonably informed about the status of the matter. The attorney charged and collected an unreasonable fee for his representation and failed to communicate the fee arrangement in writing. He did not deposit the \$30,000 retainer he received from his client into a trust account and took the money before it was earned. He failed to ensure that the non-lawyer assistant, with whom he contracted to assist him, conducted himself in a manner compliant with the attorney's ethical obligations. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.4, 1.5(a) and (b), 1.7, 1.15, 1.18, and 5.3, MRPC. The COP recommended the attorney be suspended from the practice of law for an indefinite period of not less than seven months, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re R. Allen Beck*, MT PR 11-0205 (2012).

Failure to supervise employee. The attorney, pursuant to a Rule 26, MRLDE, tendered admission, admitted the following: The attorney employed a secretary/paralegal for approximately 4 years who embezzled several hundred thousand dollars from estates represented by the attorney. The secretary wrote herself and her creditors checks on the law firm account and forged the attorney's signature. The attorney had access to all bank records, client files, bank statements and client accounts during the period of employment. In addition, client funds were also commingled with and used for general office purposes. Business records showed the attorney's office accounts would have operated in the negative from time to time but for unearned client funds and embezzled money in the office accounts. Despite having access to the pertinent records, the attorney failed to observe his employee's activities or properly monitor the client accounts. The attorney admitted violating numerous rules of professional conduct as a result of these events, including Rule 5.3(b) and (c), MRPC, for failing to make reasonable efforts to ensure his employee's conduct was compatible with the attorney's professional obligations and because the attorney failed to stop the employee's misconduct at a time when the consequences could have been avoided or mitigated. The Montana Supreme Court accepted the attorney's admission and indefinitely suspended the attorney for not less than 18 months and ordered the attorney to pay restitution to his clients. *In re McGee*, MT 03-723 (2004).

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
- (1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.19, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
 - (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(No annotations are available relating to violations of Rule 5.4, MRPC.)

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:
- (1) are provided to the lawyer's employer or its organization affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
 - (2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.
- (e) For purposes of paragraph (d):
- (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective

regulation and discipline by a duly constituted professional body or a public authority; or

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, the Montana Supreme Court.

Unauthorized practice of law while on inactive status. Attorney's law license was transferred to inactive status by the Montana State Bar for non-compliance with CLE requirements. While on inactive status, he filed pleadings in district court on his client's behalf in a declaratory judgment matter and continued his representation in the matter for more than one year constituting the unauthorized practice of law in violation of Rule 5.5, MRPC. After ODC filed its Complaint, alleging violations of Rules 5.5, 8.1(b), 8.4(c), and 8.4(d), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 5.5, 8.1, 8.4(c) and 8.4(d), MRPC. *In re Patrick Begley*, MT PR 19-0444 (2020).

Unauthorized practice of law while on inactive status. Attorney's law license was placed on inactive status in April 2016 for non-compliance with CLE requirements. While on inactive status, the attorney appeared in court and continued representing his client, despite being notified and discussing his inactive status with the State Bar of Montana, receiving his bar card identifying his license status as inactive, and being confronted by the court and opposing counsel. He knowingly continued representing his client in violation of Rule 5.5, MRPC. After ODC filed its Complaint alleging violations of Rules 1.16(a), 5.5, and 8.1(b), MRPC, the attorney failed to file an Answer, deeming all allegations of the Complaint admitted. ODC and the attorney filed a *Joint Disciplinary Recommendation and Affidavit of Consent*, wherein the attorney agreed to a three-month suspension, two-year probation following reinstatement with conditions, and payment of costs of the disciplinary proceedings. After a hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court suspended the attorney from the practice of law for three months, placed him on probation for two years upon reinstatement, and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.16(a), 5.5, and 8.1(b), MRPC. *In re Jack Morris*, MT PR 17-0243 (2018).

Unauthorized practice of law. (Reciprocal Discipline) Attorney unconditionally admitted to the allegations in the Petition for Disciplinary Action filed by Minnesota's Director of the Office of Lawyers Professional Responsibility; specifically, he engaged in the unauthorized practice of law while not licensed in the State of Minnesota in violation of Minnesota's Rules of Professional Conduct 5.5(a), 5.5(b), and 8.4(d). He accepted the discipline recommended, and the Minnesota Supreme Court publicly reprimanded the attorney and ordered him to pay \$900 in costs. Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed

identical discipline and publicly reprimanded the attorney for violations of Montana's equivalent or similar Rules 5.5(a) and 8.4(d), MRPC. *In re Andrew Small*, MT PR 17-0150 (2017).

Failure to ensure law school graduate employees did not practice without law license.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, admitting he could not successfully defend himself against allegations he violated Rules 5.3 and 5.5, MRPC. The Complaint alleged he violated Rule 5.5 by employing three law school graduates as deputy county attorneys when they were not admitted to practice law in Montana. Following a Rule 26 hearing, COP issued its Order Approving Rule 26 Tendered Admission and Final Order of Discipline accepting the attorney's *Conditional Admission and Affidavit of Consent* and, for this and other misconduct, ordered the attorney be publicly admonished by the Commission and pay the costs of the disciplinary proceedings for violating Rules 5.3 and 5.5, MRPC. *In re John W. Parker*, MT PR 15-0625 (2016).

Assisting a non-attorney in the unauthorized practice of law. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The widow hired a non-attorney "advocate" to assist her in the probate of her husband's estate in tribal court and to assist her in recovering damages. They entered into an agreement whereby the advocate would receive a percentage of any settlement he assisted in obtaining. The agreement constitutes the unauthorized practice of law and is against public policy. Both the widow and the advocate signed the contingency fee agreement between the attorney and the widow. After the case settled for \$300,000, the attorney paid the advocate approximately \$30,500 from the proceeds, after he had already paid him \$1,500 from the IOLTA trust account. By this conduct, the attorney violated Rule 5.5, MRPC, by assisting a non-attorney in the unauthorized practice of law. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the parties filed objections with the exception of the disgorgement of fees and amount of restitution. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$65,547.10, and pay costs of the disciplinary proceedings Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline)

Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money

than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Engaging in the unauthorized practice of law. Attorney's license to practice law was placed on inactive status with the State Bar of Montana in July 2010 for noncompliance with the Montana Supreme Court's Rules for Continuing Legal Education. He was notified of his placement on inactive status the following day and was prohibited from practicing law. After petitioning the Montana Supreme Court, his law license was placed on active status in December 2010 upon payment of fees. While on inactive status, the attorney represented clients in several court cases. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.16(a), 3.4(c) and 5.5, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 30 days and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety. *In re Clinton H. Kammerer*, MT PR 11-0317 (2012).

Unauthorized practice of law. Attorney was placed on inactive status for non-compliance with Continuing Legal Education ("CLE") requirements in June 2008, and in July 2008, he was administratively suspended for non-payment of dues. After being placed on inactive status and/or administratively suspended, the attorney represented clients in two Montana district court cases and in three Billings Municipal Court cases prior to the reinstatement of his law license to active status. The ODC filed a formal complaint alleging the attorney engaged in the unauthorized practice of law and knowingly disobeyed obligations under the rules of a tribunal. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 3.4(c) and 5.5, MRPC. The COP recommended the attorney receive a private admonition, be placed on probation for two years, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation and ordered the attorney to receive a private admonition, and be placed on probation with the condition that he not petition for reinstatement to active status with the State Bar of Montana. *In re Chris J. Nelson*, MT PR 10-0172 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the COP concluded that the attorney violated Rule 5.5, MRPC, because he practiced law while suspended from the practice of law pursuant to an earlier order of the Court; he violated Rules 3.3(a)(2) and 8.4(c), MRPC,

by failing to inform an Indiana U.S. Magistrate Judge and Indiana counsel of his suspension from the practice of law by the Montana Supreme Court and for acting deceitfully; and he violated Rule 8.4(d), MRPC, because he failed or refused to comply with or honor the thirty-day suspension order of the Court. The Montana Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than seven months. The Court further ordered the attorney pay the costs of the proceedings. *In re Shields*, MT PR 07-0036 (2007). (In 2009, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Practicing law while suspended. Attorney, a former Montana Supreme Court Justice, was suspended from the practice of law in 1989 and had never sought reinstatement. In 1995, the attorney prepared the Complaint and Amended Complaints filed in *Old Elk v. Healthy Mothers, Healthy Babies, Inc.* In addition to pleadings, he prepared various other documents filed on behalf of the plaintiffs in the lawsuit, entered into or attempted to enter into a fee splitting arrangement with other counsel representing the plaintiffs, actively participated in the jury instruction process in that case and filed various motions therein whereby he acted not only as an advocate for himself but also for an individual plaintiff. During disciplinary proceedings, the attorney admitted to engaging in the practice of law and stated he expected to get paid despite the fact that he was suspended from the practice and not working under any other lawyers' supervision. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rule 5.5, MRPC, and disbarred the attorney from the practice of law. *In re Shea*, MT 05-606 (2007).

Practicing law while suspended. Attorney was hired four days prior to his re-admittance to practice from a suspension to assist a client in proceeding pro se in a divorce action. The legal research and writing performed by the attorney on behalf of the client, prior to re-admission, indicated the attorney engaged in the practice of law. In exchange for the dismissal of several pending complaints, the attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violation of Rule 5.5(a), MRPC. The Montana Supreme Court approved the attorney's admission and suspended him from the practice of law for a fixed term of three years. The Court also ordered the attorney to pay the costs of the disciplinary proceedings pursuant to Rule 9(A)(8), RLDE. *In re Christian*, MT 03-734, 03-790, 04-725 (2005). (In 2008, the Montana Supreme Court denied the attorney's first petition for reinstatement. In 2010, the Montana Supreme Court granted the attorney's second petition for reinstatement.)

Practicing law while on disability/inactive status. The Montana Supreme Court had previously transferred the attorney to disability/inactive status and deferred pending disciplinary proceedings concerning the attorney. In his *Conditional Admission and Affidavit of Consent*, the attorney admitted several violations, including violation of Rule 5.5(a), MRPC. The Court accepted the attorney's admission and revoked his disability/inactive status in favor of a three-year suspension from the practice of law. The attorney would have the burden of meeting the criteria set forth in Rule 28(G), RLDE, upon his petition for reinstatement, due to his admitted physical or mental disability or infirmity. The attorney was further ordered to pay the COP and ODC's costs of proceedings. *In re Bradley*, MT 04-196 (2005).

Maintaining direct contact with client not 'paralegal' services. An attorney who the Montana Supreme Court placed on disability/inactive status admitted practicing law while on disability

inactive status. The Montana Supreme Court deferred pending disciplinary complaints against the attorney upon his transfer to disability inactive status. Following his transfer to disability inactive status, the attorney admits he met with a client at his law office and accepted a retainer. The attorney provided the client with receipts indicating a different law firm would be providing the services for the client. The attorney then prepared documents for the client, listing the other law firm as the attorneys of record, explained them to the client, obtained the client's signature and filed the documents on behalf of the client. The Commission on Practice found the attorney practiced law because he "performed acts usually performed by," an attorney. "Although Respondent attempted to provide 'paralegal services,' he was nonetheless being paid to provide legal assistance because he maintained the direct relationship with the client." The Commission on Practice reviewed the attorney's Rule 26, MRLDE, admitted violation of Rule 5.5(a), MRPC, and other rules and recommended approval to the Montana Supreme Court. The Court suspended the attorney for a fixed term of three years. *In re Bradley*, MT 04-196 (2005).

Suspended attorney telephonically appeared on behalf of client. The attorney admitted violating several rules of professional conduct pursuant to a Rule 26 tendered admission. The attorney admitted violating Rule 5.5(a), MRPC. The Montana Supreme Court had previously suspended the attorney from the practice of law for misconduct. The attorney's former law partner hired the suspended attorney to work as a paralegal. The suspended attorney was directed to request a continuance in a matter. Instead, he appeared at a telephonic hearing, stated his name and described himself as representing a party. The suspended attorney moved the court for summary judgment, which was granted. The court later determined the attorney was suspended and set aside the judgment. The Commission on Practice reviewed the attorney's admission and recommended approval to the Montana Supreme Court. The Court accepted the recommendation and suspended the attorney for not less than three years for this and other misconduct. *In re Hussey*, MT 03-735 (2004).

Practicing law while suspended. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rules 1.1, 1.3 and 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a year for this and other conduct violative of the MRPC. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC. After a formal complaint was filed, the attorney tendered his admission pursuant to Rule 26, MRLDE, for violating these rules and Rule 8.1 for failing to respond to disciplinary inquiries. The Commission recommended the Court adopt the attorney's tendered admission. The Court adopted the tendered admission and placed the attorney on probation for five years, subject to certain terms and conditions, including, but not limited to, resignation of his law license. *In re Wing*, MT 03-585 and MT 04-872 (2005).

Filing court documents on the date of suspension. The Montana Supreme Court suspended the attorney for an indefinite period of not less than three months. The Court stated in part that “[C]ommencing on September 7, 2001, [the attorney] is suspended indefinitely from the practice of law in the State of Montana for a period of not less than three months.” On September 10, 2001, the attorney filed nine documents in state district court bearing his signature and dated September 7, 2001, the day his suspension was to commence. Two state district court judges, in whose courts the attorney made the filings, struck the attorney’s documents. The attorney’s own expert witness, Bob Emmons, told the Commission that in his opinion, the attorney had practiced law without a license when he signed the documents and pleadings on the day his suspension commenced. The same expert testified that the filing of the documents was nothing more than a “ministerial act.” The Commission was not persuaded by that argument. The Commission noted that the attorney’s “excuses and explanations for his actions that led to the complaints [are] less than compelling” and determined the attorney violated the MRLDE and “Disciplinary Orders of the Montana Supreme Court.” The Commission did not discuss Rule 5.5, MRPC. The Court suspended the attorney for not less than three years. *In re Sisler*, MT 02-739 (2003).

Practicing law during period of suspension. The Montana Supreme Court suspended the attorney for five months. Days after the suspension began, the attorney filed a document he claimed was prepared prior to his suspension. The suspended attorney also prepared a substitution of counsel document, which he signed and filed, in which his client replaced the attorney as pro se counsel. The attorney also wrote letters and sent faxes to clients advising them on various legal points (e.g. whether a case could be dismissed for failure to prosecute, instructions to follow upon judgment, etc.). Without considering Rule 5.5, MRPC, the Commission on Practice found the attorney violated the Rule 7, MRLDE. The Montana Supreme Court suspended the attorney for an indefinite period of not less than one year and required the attorney to retake and pass the multi-state professional responsibility exam as a condition precedent to any petition for reinstatement. *In re Atherton*, MT 98-389 (2000).

Lawyer drafted will for client while suspended. The Montana Supreme Court suspended the attorney from the practice of law for an indefinite period of time. During his suspension, the attorney prepared a will and a power of attorney for a “client.” The Commission on Practice found the attorney’s conduct violated Rule 7, MRLDE, and Rule 8.4, MRPC. The Commission did not examine the case as a possible violation of Rule 5.5, MRPC. The Commission wrote the lawyer’s actions “further underscore his absolute disregard for and disdain of the Orders of the Montana Supreme Court and the Rules of Professional Conduct.” The Montana Supreme Court adopted the Commission’s findings and disbarred the attorney. *In re Quinlan*, MT 97-378 (1998).

Attorney practiced while suspended for not filing CLE affidavit. The Montana Supreme Court issued to the attorney an order to show cause why his name should not be dropped from the rolls practicing attorneys for failure to comply with CLE requirements. The attorney did not respond and his name was struck from the rolls. Starting a week after the court took that action, the attorney prepared and filed documents in a variety of cases until a court clerk refused his documents because of the status of his license. The attorney then filed the required affidavit. The Montana Board of Continuing Legal Education then sent the Supreme Court a letter to the effect that the attorney had complied with his CLE requirements. The Court ordered that the

attorney would be reinstated to practice as soon as he paid his attorney license tax and state bar dues. The attorney continued to do legal work until another court clerk refused his documents. The attorney then complied and filed a petition for reinstatement, which was granted. The Commission on Practice determined the attorney had practiced law while suspended, but did not address Rule 5.5, MRPC. Instead, the Commission found a violation of Rule 7, MRLDE, and Rules 8.4(c) and (d), MRPC. The Montana Supreme Court adopted the Commission's findings and indefinitely suspended the attorney for not less than six months. *In re Quinlan*, MT 94-161 (1996).

RULE 5.6: RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

(No annotations are available relating to violations of Rule 5.6, MRPC.)

RULE 5.7: RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

(No annotations are available relating to violations of Rule 5.7, MRPC.)

PUBLIC SERVICE

Rule 6

RULE 6.1: PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

(No annotations are available relating to violations of Rule 6.1, MRPC.)

RULE 6.2: ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(No annotations are available relating to violations of Rule 6.2, MRPC.)

RULE 6.3: MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(No annotations are available relating to violations of Rule 6.3, MRPC.)

RULE 6.4: LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

(No annotations are available relating to violations of Rule 6.4, MRPC.)

RULE 6.5: NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(No annotations are available relating to violations of Rule 6.5, MRPC.)

INFORMATION ABOUT LEGAL SERVICES

Rule 7

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false if it contains a material misrepresentation of fact or law. A misleading communication includes, but is not limited to those that:

- (a) omits a fact as a result of which the statement considered as a whole is materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve;
- (c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;
- (d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;
- (f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;
- (g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;
- (h) contains any paid testimonial about, or endorsement of, the lawyer without conspicuous identification of the fact that payments have been made for the testimonial or endorsement;
- (i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;
- (j) provides an office address for an office staffed only part time or by appointment only, without conspicuous identification of such fact;
- (k) states that legal services are available on a contingent or no-recovery, no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case; or
- (l) advertises for legal services without identifying the jurisdictions in which the lawyer is licensed to practice.

Misrepresenting lawyer's law license status on website. Attorney represented on his website that he was a licensed attorney in Wyoming, Georgia and Montana when his Georgia license was administratively suspended, and he was not licensed in Wyoming. After ODC filed its Complaint, for this and other misconduct, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, the attorney failed to file an Answer, and default was

entered, deeming all allegations of the Complaint admitted. The attorney's misrepresentations on his website regarding his law license status violated Rule 7.1(a), MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving one formal and three informal matters. The formal case and the three informal cases were consolidated in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaint include the following. The attorney placed advertisements in the 2007 publication of the Martindale-Hubbell Law Directory and in various phone directories for the 2005-2006, 2006-2007, and 2007-2008 advertising years. The advertisements contained a false or misleading statement about the attorney's credentials. The formal complaint alleged violations of Rules 7.1, 7.4(a) and (d), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. According to the Supreme Court's Order, the attorney admitted in his *Conditional Admission and Affidavit of Consent* that he violated, among others, Rules 7.1, 7.4(a) and (d), MRPC. The Montana Supreme Court ordered the attorney be suspended from the practice of law for not less than two years and to pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 07-0411 (2009). (Rule 7.4, MRPC, was abrogated effective 1/1/2020.)

Misleading statements regarding the status of the representation. The attorney submitted a tendered admission to a violation of Rule 7.1, MRPC, by making false and misleading statements to his client about his work on the matter and the status of the matter, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Attorney made false and misleading statements to clients regarding the availability of infant children for adoption and his ability to arrange such adoptions. Attorney created a corporation through which he represented American families seeking to adopt foreign infants from Macedonia. The Commission on Practice found the attorney misled his clients as to the availability of infant children for adoption and his ability to make the adoptions happen. The Montana Supreme Court disbarred the attorney for violating several rules of professional conduct, including Rule 7.1, MPRC. *In re Alexander*, MT 94-358 (1995).

RULE 7.2: ADVERTISING

- (a) A lawyer may communicate information regarding the lawyer's services through any media.
- (b) A lawyer shall not compensate, give, or promise anything of value to a person for recommending the lawyer's services except that a lawyer may:
- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
 - (3) pay for a law practice in accordance with Rule 1.19;
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
 - (i) the reciprocal referral agreement is not exclusive; and
 - (ii) the client is informed of the existence and nature of the agreement; and
 - (5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.
- (c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
- (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.
- (d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

(No annotations are available relating to violations of Rule 7.2, MRPC.)

RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress or harassment;

(3) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person cannot exercise reasonable judgment in employing a lawyer; or

(4) the lawyer reasonably should know that the person is already represented by another lawyer.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. Lawyers who participate in a legal services plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

(No annotations are available relating to violations of Rule 7.3, MRPC.)

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION [ABROGATED eff. 1/1/2020]

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his/her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP involving one formal and three informal matters. The formal case and the three informal cases were consolidated in the *Conditional Admission and Affidavit of Consent*. The allegations in the formal complaint include the following. The attorney placed advertisements in the 2007 publication of the Martindale-Hubbell Law Directory and in various phone directories for the 2005-2006, 2006-2007, and 2007-2008 advertising years. The advertisements contained a false or misleading statement about the attorney's credentials. The formal complaint alleged violations of Rules 7.1, 7.4(a) and (d), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. According to the Supreme Court's Order, the attorney admitted in his *Conditional Admission and Affidavit of Consent* that he violated, among others, Rules 7.1, 7.4(a) and (d), MRPC. The Montana Supreme Court ordered the attorney be suspended from the practice of law for not less than two years and to pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 07-0411 (2009).

RULE 7.5: FIRM NAMES AND LETTERHEADS

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional (e.g., website) designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.
- (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(No annotations are available relating to violations of Rule 7.5, MRPC.)

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8

RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Failure to respond to inquiries from disciplinary authority. Attorney, who was on administrative suspension for non-payment of bar dues, failed to respond to ODC's requests for a response to two separate grievances alleging he engaged in unethical conduct. ODC made numerous attempts to contact him by mail at two different addresses with no response. ODC filed a formal complaint alleging the attorney violated Rule 8.1(b), MRPC, for his failure to respond to lawful demands for information from a disciplinary authority. The attorney was served by the Office of the Montana Supreme Court Clerk by certified mail at both addresses and failed to file an Answer. COP thereafter entered default, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC. *In re Todd Stubbs*, MT PR 21-0353 (2022).

Failure to respond to inquiries from disciplinary authority. Attorney failed to respond to ODC's requests for a response to a grievance from a district court judge alleging she engaged in unethical conduct while representing numerous clients. ODC made numerous attempts to contact her by phone, text message and mail with no response. She failed to appear at a show cause hearing before the Commission on Practice after she was personally served with show cause documents by the county sheriff's civil clerk. ODC filed a formal complaint alleging violations of Rule 8.1(b), MRPC, for her failure to respond to a lawful demand for information from a disciplinary authority. The attorney was personally served and failed to file an Answer; COP thereafter entered default, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than seven months and ordered her to pay costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC. *In re Margaret Reader*, MT PR 21-0359 (2022).

Failure to timely respond to inquiries from disciplinary authority. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a Complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. The client in the first matter submitted a grievance to ODC, to which the attorney responded and advised he would withdraw from representation. When ODC followed up with the attorney regarding the status of his intended withdrawal, he failed to timely respond in violation of Rule 8.1(b), MRPC. The client in the second matter submitted a grievance to ODC, which was mailed to the attorney for response. The attorney advised the client the firm could no longer represent him and would move to withdraw from the case but failed to do so. He further failed to respond to ODC's multiple requests for response to his client's allegations in violation of Rule 8.1(b), MRPC. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order wherein it accepted the *Conditional Admission* and, for this and other misconduct, ordered the attorney be publicly admonished by COP, be placed on probation for three years with conditions, and pay the costs of the disciplinary proceedings for his multiple violations of Rules 1.3, 1.4, 1.16(d), 3.2, and 8.1(b), MRPC. *In re Matthew Lowy*, MT PR 20-0592 (2021).

Failure to respond to inquiries from disciplinary authority. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint regarding two separate matters. The attorney admitted the facts as alleged in the Complaint and to violating Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. The client in the first matter submitted a grievance to ODC, which ODC sent to the attorney and made multiple requests for his response to his former client's allegations and to provide certain documents and information. Despite promises to provide it, the attorney repeatedly failed to do so and failed to cooperate with ODC until after the Complaint was filed in violation of Rule 8.1(b), MRPC. The client in the second matter submitted a grievance to ODC wherein he requested a refund of his retainer. The attorney advised ODC he intended to refund \$1,500 but failed to do so. Despite ODC's multiple requests for the attorney's response to his client's allegations and for additional information, the attorney failed to respond in violation of Rule 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than one year and ordered him to pay costs of the disciplinary proceedings for his violations of Rules 1.3, 1.4, 1.5(a), 1.5(b), 1.15, 1.16(d), 1.18, and 8.1(b), MRPC. If he petitions the Court for reinstatement of his license, he must comply with certain conditions prior to reinstatement. If reinstated, he must comply with certain conditions thereafter for a period of three years. *In re Casey Nixon*, MT PR 20-0265 (2020).

Failure to respond to disciplinary authority's requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting the facts alleged in the Complaint and that she violated Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. The attorney admitted she violated Rule 8.1(b), MRPC, by failing to respond to ODC's requests for her response to her former client's allegations of ethical misconduct. After a Rule 26 hearing, COP issued its Order on Rule 26 Proceeding, wherein it accepted the attorney's *Conditional Admission* and approved the agreed upon discipline. For this and other misconduct, COP ordered the attorney be publicly admonished by COP, pay \$800 in

restitution to her former client, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.15, 1.16, and 8.1(b), MRPC. *In re Suzanne Marshall*, MT PR 20-0038 (2020).

Failure to timely respond to disciplinary authority's requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting the facts alleged in the Complaint and that he violated the MRPC multiple times. Over a three-month period, ODC received three grievances from the attorney's clients alleging unethical conduct, which ODC sent to the attorney twice requesting his response to the allegations in each grievance and granted him an extension to respond in all three matters. After receiving no responses, ODC emailed the attorney, who advised he would send his responses by mail and email the same day. He failed to do so until one year later and after ODC filed a formal complaint. The attorney admitted he repeatedly violated Rule 8.1(b), MRPC, by failing to promptly and diligently respond to ODC's inquiries. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission and Affidavit of Consent to the Montana Supreme Court, recommending the Court accept the *Conditional Admission*. The Court accepted COP's recommendation to approve the *Conditional Admission* and adopted COP's recommendation for discipline in part. The Court ordered the attorney be publicly admonished by COP and pay the costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC. *In re Patrick Sandefur*, MT PR 20-0039 (2020).

Making false statement to the Supreme Court on petition for reinstatement to active status. Attorney's law license was transferred to inactive status by the Montana State Bar for non-compliance with CLE requirements. While on inactive status, he filed pleadings in district court on his client's behalf in a declaratory judgment matter and continued his representation in the matter for more than one year constituting the unauthorized practice of law in violation of Rule 5.5, MRPC. The attorney did not petition the Supreme Court for reinstatement to active status for nearly two years after his license was transferred to inactive status. The Court granted his petition the following day. In his petition for reinstatement, the attorney advised the Court he has not committed any acts or omissions while not on active status that would be sanctionable under the MRPC. His unauthorized practice of law was a sanctionable offense under the MRPC. His false statement to the Court violated Rules 8.1, 8.4(c), and 8.4(d), MRPC. After ODC filed its Complaint, alleging violations of Rules 5.5, 8.1(b), 8.4(c), and 8.4(d), MRPC, the attorney failed to file an Answer, deeming all allegations of the Complaint admitted. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 5.5, 8.1, 8.4(c) and 8.4(d), MRPC. *In re Patrick Begley*, MT PR 19-0444 (2020).

Making false statement to the Supreme Court on petition for reinstatement to active status. Attorney had been disciplined in a previous disciplinary matter, which resulted his appearance before the Montana Supreme Court for public censure, and a two-year probation with certain conditions. The attorney appeared for the public censure but failed to comply with any probationary terms and conditions as ordered by the Court in violation of Rule 3.4(c), MRPC. After the Montana State Bar transferred his law license to inactive status for non-compliance

with CLE requirements, the attorney violated Rules 8.1 and 8.4(c), MRPC, when he applied for reinstatement and falsely stated he had not committed any acts or omissions sanctionable under the MRPC while not on active status. His non-compliance with the Supreme Court's disciplinary order was a sanctionable violation under the MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court indefinitely suspended the attorney for violating Rules 3.4(c), 8.1, and 8.4(c), MRPC. *In re Patrick Begley*, MT PR 19-0023 (2020).

Failure to respond to inquiries from disciplinary authority. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. The attorney defaulted on all loans. An interested person submitted a grievance to ODC concerning the attorney's financial transactions. The attorney failed to respond to ODC's multiple requests for response to the allegations and failed to provide documents ODC requested in violation of Rule 8.1(b), MRPC. After ODC filed its Complaint alleging violations of Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted after the attorney filed objections and ODC responded. The Court disbarred the attorney, ordered him to pay full restitution totaling \$1,069,970.83 plus interest to those harmed, and ordered him to pay costs of the disciplinary proceeding for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Failure to respond to requests for response from disciplinary authority. Attorney was hired by two clients to pursue their personal injury matter on a contingency fee basis. After months of no progress and no contact, the clients fired him. Despite several inquiries by ODC requesting a response to the grievance his former clients submitted to ODC, the attorney failed to respond in violation of Rule 8.1(b), MRPC. After ODC filed its Complaint alleging violations of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC, for this and other misconduct, the attorney failed to file an Answer and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted. Considering the attorney's disciplinary history as an aggravating factor, the Court disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), and 8.1(b), MRPC. *In re David S. Freedman*, MT PR 18-0516 (2019).

Failure to respond to inquiries from disciplinary authority. Attorney failed to respond to ODC's requests for a response to a Trust beneficiary's allegations in her complaint submitted to ODC in violation Rule 8.1(b), MRPC. After ODC filed its Complaint, for this and other misconduct, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted. For this and other

misconduct and for his numerous, egregious, prolonged failures and his extreme dishonesty and breaches of duty, the Court disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Failure to comply with demand for information from disciplinary authority. Attorney refused to comply with ODC's request for documents in connection with its investigation into allegations of another Montana attorney's misconduct, relying on claimed privileges but without providing a privilege log. ODC notified COP of her failure to timely provide the documents, alleging the attorney's conduct violated Rules 3.4(a), 8.1(b), and 8.4(d), MRPC. COP set a show cause hearing, at which the attorney appeared and again asserted her privilege claims but failed to seek relief in response to ODC's request. COP directed the attorney produce the documents and privilege log for *in camera* inspection. The attorney complied, and COP found her privilege claims lacked merit and ordered her to provide ODC the non-privileged documents. She failed to timely produce the documents and failed to appear at a subsequent show cause hearing without providing notice, which COP was forced to continue after she improperly and unsuccessfully removed the proceedings to federal court. After COP issued its Order to Show Cause, the attorney continued to file a significant number of pleadings and sent multiple emails and letters to ODC and COP. After the show cause hearing, COP issued its Recommendation to the Supreme Court wherein it found the attorney's conduct was vitriolic, disrespectful, and accusatory toward ODC, disciplinary counsel personally, COP, COP Chair and Vice-Chair, and the federal judge. COP further found her filings and actions were designed to delay and disrupt COP's business and demonstrated a disturbing hubris, troubling lack of professionalism, inability to competently present legal arguments, and lack of judgment. COP concluded the attorney's actions greatly exceeded any bound of reasonableness or moderation and were an extreme example of a vexatious litigant. She threatened and falsely accused every attorney, witness, and judge who disagreed with her positions, including claims of criminal misconduct; her actions reflected a complete disdain for the law and the Court's disciplinary process. COP recommended the attorney be found in contempt, be indefinitely suspended from the practice of law for not less than seven months, be ordered to pay costs of the disciplinary proceedings, and in any petition for reinstatement be required to establish she is psychologically capable to competently practice law. The Montana Supreme Court accepted and adopted COP's Recommendation, found the attorney in contempt pursuant to Rule 19(D), MRLDE, for her failure to comply with COP's order and obstructing the disciplinary process; ruled she was subject to discipline under Rule 8(A)(6), MRLDE; indefinitely suspended the attorney for not less than seven months concurrent with the disbarment imposed in MT PR 16-0635; ordered her to pay costs of the disciplinary proceedings; and required her to establish she is psychologically capable to competently practice law in any petition for reinstatement. *In re Genet McCann*, MT PR 17-0670 (2018).

Failure to respond to ODC's inquiries. Attorney's law license was placed on inactive status in April 2016 for non-compliance with CLE requirements. While on inactive status, the attorney appeared in court and continued representing his client, despite being notified and discussing his inactive status with the State Bar of Montana, receiving his bar card identifying his license status as inactive, and being confronted by the court and opposing counsel. His failure to respond to ODC's requests violated Rule 8.1(b), MRPC. After ODC filed its Complaint alleging violations of Rules 1.16(a), 5.5, and 8.1(b), MRPC, default was entered, the attorney failed to file an

Answer, deeming all allegations of the Complaint admitted. ODC and the attorney filed a *Joint Disciplinary Recommendation and Affidavit of Consent*, wherein the attorney agreed to a three-month suspension, two-year probation following reinstatement with conditions, and payment of costs of the disciplinary proceedings. After a hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court suspended the attorney from the practice of law for three months, placed him on probation for two years upon reinstatement, and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.16(a), 5.5, and 8.1(b), MRPC. *In re Jack Morris*, MT PR 17-0243 (2018).

Failure to timely respond to disciplinary authority's requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of the MRPC. The attorney was retained and paid \$4,500 to assist his client in responding to the amended parenting plan filed by her child's father. After she fired him, his former client submitted a grievance to ODC. The attorney failed to provide all additional documents requested by ODC to assist in its investigation of his former client's allegations in violation of Rule 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For this and other admitted misconduct, the Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings for violating Rules 1.4 and 8.1(b), MRPC. *In re Michael A. Horton*, MT PR 17-0459 (2018).

Failure to respond to disciplinary inquiries. Attorney was retained to represent his client in his intent to divorce his wife and later in criminal charges filed against him. The client ultimately submitted a grievance against the attorney to ODC, which ODC forwarded to him with a request to respond. He failed to respond to the first and second inquiries sent by ODC in violation of Rule 8.1(b), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney from practicing law for not less than seven months, ordered him to pay \$850 in restitution plus interest to his former client and to pay costs of the disciplinary proceedings for violating Rules 1.3, 1.16(d), 3.4(c), and 8.1(b), MRPC. *In re Brian Kohn*, MT PR 17-0234 (2018).

Failure to respond to disciplinary authority. Attorney represented the Montana Public Employees Association (MPEA) for several years. MPEA submitted an ethics complaint to ODC regarding the attorney's handling of a grievance against the City of Whitefish pursued by a member of the collective bargaining unit. The attorney failed to respond to ODC's requests for response to the grievance, despite acknowledging service of the grievance by certified mail receipt, in violation of Rule 8.1(b), MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b) and 8.4(c), MRPC. *In re Carter Picotte*, MT PR 16-0446 (2017).

Failure to respond to disciplinary authority. Attorney's law license status was indefinitely suspended for a period not less than seven (7) months at the time ODC filed its complaint with the Montana Supreme Court regarding two new grievances submitted to ODC by former clients. The attorney failed to timely respond to ODC's requests for information regarding the two grievances, despite his promises to do so in violation of Rule 8.1(b), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. Considering the attorney's disciplinary history, which included five admonitions, two public censures, and three suspensions between 1999 and 2014, the Court disbarred the attorney from the practice of law in Montana for violating Rule 8.1(b), MRPC. *In re Roy W. Johnson*, MT PR 16-0238 (2017).

Failure to respond to disciplinary authority. (Reciprocal Discipline) Attorney entered into a *Stipulation for Discipline* and was suspended for 120 days by the Oregon Supreme Court, with all but 30 days stayed until he successfully completed a 2-year term of probation. The attorney stipulated and admitted violating Oregon's Rules of Professional Conduct in two separate matters. In the first matter, the attorney admitted he violated Oregon's RPC 8.1(a)(2) by knowingly failing to respond to the Oregon State Bar's lawful demands for additional information regarding his client's complaint filed with the Bar. As a result, the attorney was administratively suspended. After hearing before the Oregon Disciplinary Board, the *Stipulation for Discipline* was approved by the Oregon Supreme Court for this and other misconduct, and the attorney was suspended for 120 days, with all but 30 days stayed until he successfully completed a 2-year term of probation for violating the Oregon RPC 1.4(a), 1.15-1(d), and 8.1(a)(2), which are similar or equivalent to Montana's Rules 1.4(a), 1.15(b), and 8.1(b), MRPC. Pursuant to Rule 27, MRLDE, the Montana Supreme Court ordered reciprocal discipline and suspended the attorney from practicing law in Montana for 120 days, with all but 30 days stayed until he successfully completed a 2-year term of probation. *In re Edward LeClaire*, MT PR 17-0034 (2017).

Failure to timely respond to disciplinary authority's requests for information. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting to violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. The attorney failed to properly and timely respond to ODC's request for information until a show cause hearing had been set before the Commission on Practice in violation of Rule 8.1(b), MRPC. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be publicly censured by the Court and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.2, 1.3, 1.4, 1.16(a), and 8.1(b), MRPC. *In re Jack Morris*, MT PR 16-0265 (2017).

Failure to respond or promptly respond to inquiries from disciplinary authority. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC in relation to two separate matters. In violation of Rule 8.1(b), MRPC, the attorney failed to provide additional information ODC requested during its investigation, despite multiple communications and extensions granted, and failed to respond to his client's allegations

until after he was ordered to appear before the COP and show good cause why he failed to respond. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court ordered the attorney be publicly censured by the Court, be placed on probation for two years, subject to certain terms and conditions, and pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1, and 8.4(c), MRPC. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Making false statements knowingly or recklessly regarding incumbent judicial candidate opponent during election campaign. The attorney sent a mailer to county residents and placed advertisements against his incumbent opponent during his campaign for election to a district court judge position, all of which included knowingly false and reckless statements—including unsubstantiated claims that his opponent had presided as the judge in a case against the ex-boyfriend of the opponent’s “cocaine and sex partner” and that his opponent had purchased illegal drugs from a 13-year-old child—that had a substantial likelihood of prejudicing pending legal proceedings. The attorney argued his statements were free speech protected by the First Amendment. After a formal hearing, COP concluded the attorney violated Rules 8.1(a) and 8.4(c), MRPC, by making or causing to be made statements he knew to be false or made with reckless disregard for the truth concerning the integrity of a judge, and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. COP submitted Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC. The Court further stated that the knowingly-made false statements and false statement made with reckless disregard of the truth do not enjoy constitutional protection. *In re Robert C. Myers*, MT PR 17-0026 (2017).

Making false statements knowingly or recklessly regarding incumbent judicial candidate opponent during election campaign. The attorney placed an advertisement during his campaign for election to a district court judge position in which he had a former client make representations about the attorney’s incumbent opponent and his integrity that he knew to be false or made with reckless disregard for the truth. The attorney also provided a written statement to the local newspaper that included knowingly false and reckless statements about his opponent. The attorney argued his statements were free speech protected by the First Amendment. After a formal hearing, COP concluded the attorney violated Rules 8.1(a) and 8.4(c), MRPC, by making or causing to be made statements he knew to be false or made with reckless disregard for the truth concerning the integrity of a judge, and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court indefinitely suspended the attorney for three years, consecutive with discipline imposed in PR 16-0245 and PR 17-0026, and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC. The Court further stated that the knowingly-made false statements and false statement made with reckless disregard of the truth do not enjoy constitutional protection. *In re Robert C. Myers*, MT PR 16-0411 (2017).

Making false statement and misrepresentations to disciplinary authority with intent to deceive.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC, in relation to two separate matters. In relation to one matter, he admitted violating Rules 8.1(a) and 8.4(c), MRPC, by falsely stating he refunded a client's retainer fee and providing a purported cover letter to his client transmitting the check. The letter was never sent to the client, and the attorney did not return the client funds until after ODC questioned him. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be publicly censured by the Court, be placed on probation for two years, subject to the certain terms and conditions, and pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Failure to promptly and fully respond to disciplinary inquiries.

Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client. After his client submitted his grievance to ODC, ODC sent it to the attorney for his response to his client's allegations. The attorney failed to respond to ODC's requests for his response until after he appeared at a show cause hearing before the Commission on Practice. After receiving his response, ODC requested the attorney provide additional information to assist in its investigation; he failed to do so. His untimely response and failure to respond to ODC's requests for response and information violated Rule 8.1(b), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c), and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Failure to respond to disciplinary inquiries.

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC, in relation to two client matters. He admitted violating Rule 8.1(b), in one client matter for failing to respond to ODC's disciplinary inquiries before and after appearing before the COP and promising to provide the information, despite receiving an extension. Regarding another client matter, he admitted violating Rule 8.1(b) for failing to respond to disciplinary inquiries, resulting in a show cause hearing before COP. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court ordered the attorney to receive a public censure by the Court, pay restitution to his client, pay the costs of the disciplinary proceedings, and be placed on a two-year probation with certain terms and conditions for violating Rules 1.1, 1.2, 1.3, 1.4, 1.5(b), 1.8(f), 1.16(d), and 8.1(b), MRPC. *In re Joseph Connors, Jr.*, MT PR 14-0682 (2015).

Failure to respond to disciplinary inquiries. Attorney, practicing immigration law out-of-state, was retained to assist his clients regarding their immigration cases. After his clients submitted grievances to ODC, the attorney failed to respond to disciplinary inquiries in both matters and failed to appear at a show cause hearing before COP. After a formal hearing, COP submitted its

Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court ordered the attorney be publicly admonished by the COP, complete an office practice management course, submit a written plan of management practice and policy changes, and pay costs of the disciplinary proceedings for violating Rules 1.4, 1.5(a), 1.5(b), 1.16(d), and 8.1(b), MRPC. *In re Eduardo L. Encinas*, MT PR 13-0706 and MT PR 14-0250 (2015).

Failure to respond to disciplinary inquiries. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. After the attorney failed to distribute any funds to multiple heirs, one heir submitted a grievance to ODC, which ODC sent to the attorney to provide his response and pertinent information necessary to conduct its investigation. After receiving several extensions, the attorney failed to respond to ODC's inquiries in violation of Rule 8.1(b), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the parties filed objections with the exception of disgorgement of fees and the amount of restitution. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$65,547.10 and to pay costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Failure to respond to disciplinary inquiries. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the facts as alleged in the Complaint and to violating Rules 8.1(b) and 8.4(d), MRPC, for failing to respond to multiple lawful demands for information from ODC until after ODC filed a formal disciplinary complaint against her. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney receive a public censure by the Court and pay costs of the disciplinary proceedings for violating Rules 8.1(b) and 8.4(d), MRPC. *In re Myshell L. Lyday*, MT PR 15-0032 (2015).

Failure to respond to disciplinary inquiries; failure to appear. Attorney failed to respond to ODC's inquiries regarding allegations of ethical misconduct by a U.S. District Court Judge and a former client in two separate matters. The Commission on Practice ordered him to appear before it and show cause why appropriate discipline should not be imposed for his failures to respond or cooperate. He failed to appear at the show cause hearing or to respond at all. ODC filed a formal complaint alleging violations of Rules 8.1(b) and 8.4(d), MRPC, to which the attorney failed to file an Answer, deeming all allegations of the Complaint admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation, which the Court accepted and adopted. The Court disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(b) and 8.4(d), MRPC. *In re Elmer S. Rhodes*, MT PR 14-0698 (2015).

Failure to respond to disciplinary inquiries. Attorney was paid \$600, plus a monthly escrow fee, to act as the closing agent for sale of real property under contract for deed. He prepared the

documents necessary to execute the sale and was appointed trustee and escrow agent. After the purchaser made her final payment, she made repeated requests to the attorney to complete the transfer title by recording the deed and other documents memorializing the sale. Despite his obligations under the escrow agreement and trust indenture, the attorney failed to deliver the documents to the purchaser or to record them himself. He could not locate the file or the sale documents. The purchaser was forced to hire another attorney to bring a quiet title action to effectuate transfer of the title and paid him \$4,495.29. Two and a half years after making her final payment, the purchaser finally acquired title. In the interim, the attorney was indefinitely suspended from the practice of law for rule violations in an unrelated matter. The seller made repeated requests to the attorney for an accounting of all payments made under the contract for deed. The attorney acknowledged his obligation but failed to produce an accounting. The seller was unsure if he received all payments due and owing. The attorney repeatedly failed to respond to the grievance filed against him until a show cause hearing was scheduled. He provided his response by fax and appeared at the hearing the following day, more than one year following ODC's repeated requests. The attorney's response included the original sale documents; however, the quiet title action and judicial transfer of title rendered them moot. In another matter, the attorney represented the personal representative of an estate. After failing to complete the probate, the court ordered the attorney to show cause why the estate remained open; he failed to respond. One year later, the court issued a second order to show cause; the attorney again failed to respond. Due to inactivity by the personal representative, the court ordered the estate be closed. The attorney failed to notify the personal representative that the estate was ordered to be closed, that he was suspended from practicing law, or otherwise advise him of the status of the matter. Six months later, the personal representative involved the county attorney to assist in retrieving his file from the attorney. Despite repeated requests, the attorney failed to comply. After being informed about the attorney's suspension, the personal representative obtained new counsel, who advised him of the estate's closure. The estate was then reopened, administered and completed in seven months. The attorney repeatedly failed to respond to the grievance filed against him. ODC filed a formal complaint alleging violations of Rules 1.1, 1.3, 1.15(b), 1.4, 1.16(a) and (d), and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than two years, pay \$4,495.29 in restitution, and pay the costs of the disciplinary proceedings. *In re Bradley L. Aklestad*, MT PR 14-0055 and PR 14-0245 (2014).

Failure to promptly and fully respond to disciplinary inquiries or authorities. Attorney filed a lawsuit on his client's behalf regarding a personal injury claim. He settled the case for \$12,173.18 new money, and the insurer sent him check for that amount. He deposited the money into his trust account almost 16 months later and immediately wrote himself a check for fees and costs totaling \$937; however, he did not disburse any funds to his client. Within two months, he had withdrawn all of the settlement funds, using them for his own purposes. The client had made numerous inquiries about the status of the settlement proceeds. After the attorney received his client's grievance, he sent him a check for the entire amount of the new money settlement three years after receiving it from the insurer. In order to cover the check, he deposited \$12,500 into his trust account that same day. The attorney delayed responding to the grievance for six

months after having to appear and show cause to the Commission for his failure to respond. After several months of requests, the attorney eventually provided his trust account records to ODC. ODC's requests for admission were deemed admitted after a motion to compel discovery was filed, and the attorney failed to respond or otherwise plead. Following a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.3, 1.15, 1.18, 8.1(b), and 8.4, MRPC, and Rule 8A(6), MRLDE. Upon the Commission's recommendation, the Supreme Court indefinitely suspended the attorney from the practice of law for one year and ordered him to pay the costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 13-0321 (2014).

Knowingly making false representations in a disciplinary matter. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC. Specifically, he admitted advancing \$1,000 to clients who retained him to represent them regarding their personal injury claims resulting from a motor vehicle accident. Shortly after he was hired, the clients retained new counsel, who filed a Complaint and Demand for Jury Trial on the clients' behalf. Five days later, the attorney faxed a letter to the newly retained counsel, advising that the clients had re-hired him to represent them and their newborn baby regarding their personal injury claims. During that same month, the attorney advanced his clients \$3,150. At the attorney's suggestion, the clients also retained another law firm, with whom the attorney entered into a 30/70 fee sharing agreement. The attorney made advances to the clients totaling \$13,122.31. For nine advances totaling \$5,350, the client signed an Assignment of Judgment Proceeds, which gave the attorney a propriety interest in the case. He also charged the client administrative fees totaling \$1,000. He failed to advise his clients, in writing, of the desirability to seek independent counsel regarding the advances and failed to obtain their written, informed consent to the terms of the transactions and his role therein, including whether he represented the client in the transactions. Upon inquiry, the attorney falsely represented to ODC that he had never advanced money to other clients, former or current, except for litigation expenses. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for 10 years subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Gregory L. Ingraham*, MT PR 13-0293 (2014).

Failure to respond to disciplinary inquiries. Attorney, in two separate matters, failed to fully respond to ODC's requests for additional information and documents. The attorney has a history of discipline, including, but not limited to, two public censures, a two-year probation, and a 60-day suspension for conduct that included failure to respond to disciplinary inquiries. At a show cause hearing before COP, the attorney agreed to respond to ODC's inquiries but failed to do so. A formal complaint was filed, and the attorney filed an answer and counterclaim. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE, for failing to timely produce requested documents or advise ODC they were either not recoverable or in existence. The attorney's failure caused a two-year delay in the disciplinary proceedings and an inability to complete the investigations of two former clients' grievances. The COP recommended the attorney be suspended for a period of not less than

seven months and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Roy W. Johnson*, MT PR 13-0799 (2014).

False statements to disciplinary authority. Attorney represented both a husband and wife during a federal investigation of methamphetamine distribution. The wife was a confidential witness in the investigation. The attorney represented her at an interview, during which she gave law enforcement incriminating information against her husband. Later the same evening, the attorney represented the husband at an interview by law enforcement. Law enforcement used the incriminating information provided by the wife in the interview. One year later, the wife was interviewed by law enforcement a second time during which she again gave information that incriminated her husband. The attorney represented her at that interview. When the interview concluded, the attorney advised law enforcement he was no longer representing the husband. He did not invoke the spousal immunity privilege during the interviews, nor did he obtain an informed consent waiver of actual or potential conflict of interest from either client. The following day, the attorney filed a petition for dissolution of marriage on the wife's behalf before he had terminated his representation of the husband. The husband was subsequently federally indicted on several charges of drug trafficking, firearms possession and stolen firearms possession. He pled guilty to one count of possession with intent to distribute and was sentenced to 20 years in federal prison with six years of supervised release. In his response to a disciplinary inquiry, the attorney denied having represented the wife in her dissolution proceeding. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court. The Court found the attorney violated Rules 1.7, 1.9, 8.1(a) and 8.4(c), MRPC, and ordered he be suspended from the practice of law for 90 days, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Solomon Neuhardt*, MT PR 13-0070 (2014).

Failure to respond to disciplinary inquiries. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC. Specifically, he admitted he was retained to file a lawsuit on behalf of his clients against their real estate agent but failed to act with reasonable diligence and promptness in fulfilling his representation. He did not serve the real estate agent or otherwise pursue the filed complaint in a timely manner, and he failed to make reasonable efforts to expedite his clients' lawsuit consistent with their interests. He failed to return his clients phone calls and respond to their emails. He failed to provide them with periodic invoices for his completed work, pursuant to the fee agreement. After his clients terminated his representation, he filed an attorney's lien claiming fees were due and owing in excess of \$11,000, which was later quashed. He failed to produce his clients' file to their new attorney and did not timely execute the notice of substitution of counsel, causing further delay of their case. He failed to respond to ODC's inquiries concerning his clients' ethics grievance. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.3, 1.4, 1.16, 3.2, and 8.1, MRPC, the Supreme Court ordered the attorney be suspended for 90 days, be publicly admonished by the COP, pay \$2,500 in restitution to his clients, and pay the costs of the disciplinary proceedings. *In re F. Ron Newbury*, MT PR 12-0680 (2014).

Failure to respond to disciplinary inquiries. Attorney, while indefinitely suspended for failure to respond to disciplinary inquiries in other matters, failed to respond to disciplinary inquiries in three new matters. He had previously been placed on a two-year probation for the same misconduct but failed to comply with the terms of his probation, resulting in the indefinite suspension imposed by the Court. ODC filed two separate formal complaints, which were consolidated. The attorney failed to file Answers; therefore, all allegations in the complaints were deemed admitted. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Martin J. Eveland*, MT PR 13-0342 and PR 13-0491 (2014).

Failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Failure to respond to disciplinary inquiries. Attorney, who had previously resigned from the practice of law and was subsequently suspended for an indefinite period of not less than seven months, moved to dismiss the formal complaint for lack of jurisdiction. The Supreme Court denied the motion. The attorney failed to file an Answer to the formal complaint ODC filed against him; therefore, all allegations were deemed admitted. The complaint alleges, during his representation of a defendant in a lawsuit, the attorney failed to file an opening appeal brief after filing a notice of appeal of a summary judgment award to the Supreme Court. Summary judgment had been granted against his client for nearly \$108,000. The attorney failed to respond to the opposing party's motion to dismiss for failure to file an appeal brief, and the appeal was dismissed. He failed to keep his client informed and to respond to his inquiries. He failed to

deliver a copy of his client's file to his new counsel, and he failed to respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16, and 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be disbarred and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Darrel Moss*, MT PR 12-0656 (2013).

Failure to respond to disciplinary inquiries. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.5, 1.15, 1.18, 1.16(a)(2) & (d), and 8.1(b), MRPC, and Rule 8A, MRLDE. Specifically, the attorney admitted the following. He was hired by his client to handle post-dissolution issues and to pursue an appeal. His opening appeal brief did not comply with the Montana Rules of Appellate Procedure and was returned for compliance revisions and re-filing. The attorney failed to timely file a revised brief, and the opposing party moved to dismiss. The attorney did not respond to the motion. The Supreme Court denied his motion for extension of time to file a revised brief and dismissed the appeal. The client moved *pro se* to set aside the dismissal, which the Court granted and sanctioned the attorney. The attorney suffered from a mental health condition that materially impaired his ability to represent his client. He failed to respond to disciplinary inquiries regarding his conduct. In a second dissolution matter, the attorney was retained after receiving notice that his law license would be transferred to inactive status for failure to comply with the Montana Continuing Legal Education requirements. He did not advise his client of the notice or of his mental health condition. He accepted the client's \$1,000 retainer without communicating the fee arrangement in writing. He failed to deposit the retainer into his IOLTA trust account and took the fees before they were earned. He did not enter an appearance in the dissolution proceedings, did not contact opposing counsel, performed little or no substantive work in the matter, and did not reasonably communicate with his client. His license was transferred to inactive status within two months of being hired. He led his client to believe his return to practice was imminent even though he did not petition to return to active status. The attorney reimbursed his client the retainer 18 months after being transferred to inactive status. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted and adopted. The Supreme Court ordered the attorney to be publicly censured by the Court, be placed on probation for three years, subject to terms and conditions, and pay the costs of the disciplinary proceedings. *In re Philip J. O'Connell*, MT PR 12-0665 (2013).

Failure to respond to disciplinary inquiries; failure to comply with discipline order. Attorney, who was on probation for two years for failure to respond to disciplinary inquiries and failure to appear at a show cause hearing in two other matters, again repeatedly failed to respond to disciplinary inquiries in new matter. He had also failed to comply with terms of his probation, namely, communicating with his mentor and reporting to ODC. ODC filed a formal complaint, and the attorney failed to file an Answer; therefore, all allegations in the complaint were deemed admitted. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. The COP recommended the attorney be indefinitely

suspended for a period of not less than one year and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Martin J. Eveland*, MT PR 12-0664 (2013).

Failure to respond to disciplinary inquiries; failure to appear; and failure to comply with a disciplinary order. Attorney failed to respond to ODC's disciplinary inquiries in three separate informal matters, despite ODC's multiple requests. The attorney failed to appear at a Show Cause hearing before the Commission on Practice, at which he was to show cause why appropriate discipline or sanction should not be imposed for his failures to respond or cooperate. The attorney failed to comply with the discipline imposed in a prior disciplinary order issued by the Montana Supreme Court. ODC filed a formal complaint alleging violations of Rules 8.1(b) and 8.4(d), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were admitted. The COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than seven months, and pay costs of the disciplinary proceedings for violating Rules 8.1(b), and 8.4(d), MRPC, and Rule 8A(6), MRLDE. *In re Bradley L. Aklestad*, MT PR 11-0601 (2012).

Failure to respond to disciplinary inquiries; and failure to appear. Attorney failed to respond to ODC's disciplinary inquiries and failed to appear at a Show Cause hearing held before the Commission on Practice, at which he was to show cause why appropriate discipline or sanction should not be imposed for his failures to respond or cooperate. ODC filed a formal complaint alleging violations of Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were deemed admitted. At the time, his license was already indefinitely suspended for a period of not less than seven months for the same conduct and Rule violations. The COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney be disbarred, and pay costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. *In re Fausto G. Turrin*, MT PR 12-0058 (2012).

Failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disciplined by the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona. According to the Committee's Order of Admonition and Costs, the attorney violated the following Rules of the Arizona Supreme Court: Rule 42, ER 8.1, and Rule 54(d)(2), based on the following facts. The attorney failed to respond to a lawful demand for information from a disciplinary authority and failed to furnish information or respond promptly to any inquiry or request from bar counsel. By the Committee's Order, it admonished the attorney for his conduct and ordered him to pay costs and expenses in the amount of \$600. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and ordered the attorney be publicly reprimanded by the Commission on Practice for his violations of the Arizona Rules of Professional Conduct. *In re Elmer S. Rhodes*, MT PR 12-0490 (2012).

Failure to respond to disciplinary inquiries; and failure to appear. Attorney failed to respond to an informal complaint filed against him with the ODC, despite ODC's multiple requests. The attorney failed to appear at a Show Cause hearing held before the Commission on Practice, at

which he was to show cause why appropriate discipline or sanction should not be imposed for his failures to respond or cooperate. ODC filed a formal complaint alleging violations of Rules 8.1(b) and 8.4(d), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore, all allegations of the Complaint were deemed admitted. The COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than seven months, and pay the costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC. *In re Thomas R. Anacker*, MT PR 11-0600 (2012).

Failure to respond to disciplinary inquiries. Attorney failed to respond to two separate informal complaints filed against him with the ODC despite ODC's two requests for a response. Respondent failed to appear at a Show Cause hearing held before the Commission on Practice, at which he was to show cause why appropriate discipline or sanction should not be imposed for his failure to respond or cooperate. ODC filed a formal complaint alleging violations of Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. In his Answer, the attorney admitted to the allegations, and a hearing was held before the COP. The COP then submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered that the attorney be placed on probation for a period of two years, subject to certain conditions, and pay the costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE. *In re Martin J. Eveland*, MT PR 11-0308 (2012).

Failure to respond to disciplinary inquiries. Attorney was retained to represent a client in connection with the termination of his employment. The attorney filed a wrongful termination lawsuit but failed to serve the defendants and did nothing further on the case. He also failed to keep his client reasonably informed about the status of his matters despite his client's multiple attempts to contact him, and failed to comply with applicable law requiring notice to or permission of a tribunal to terminate representation. The attorney represented another client in a landlord/tenant dispute. He failed to comply with three separate court orders directing his client to comply with discovery requests. The attorney failed to respond to requests from ODC and COP on three separate occasions with justification for his failure or refusal to respond. The ODC filed a formal complaint alleging the attorney failed to provide his client with competent representation, failed to act with reasonable diligence and promptness in representing his client, failed to keep his client reasonably informed about the status of his legal matter, failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation of his client, knowingly disobeyed an obligation under the rules of a tribunal, failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, failed to promptly and fully respond to inquiries from ODC and failed to appear at a show cause hearing before COP. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.4, 1.16(c), 3.4, and 8.1, MRPC, and Rule 8A, MRLDE. The COP recommended the attorney be suspended from the practice of law for a period of 90 days, obtain a mentor to be approved by COP, undergo a psychological evaluation and report the results to ODC, comply with the recommendations of his psychological evaluation, provide quarterly reports to ODC regarding his mentoring, his practice of law and his compliance with any recommendations of his psychological examination, and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact,

Conclusions of Law and Recommendation in its entirety. *In re F. Ron Newbury*, MT PR 10-0617 (2012).

Failure to respond to disciplinary inquiries. Attorney and/or his attorney failed to respond to ODC's requests for information regarding his tax returns for the years 2000 through 2009. In ODC's formal complaint, in addition to the failure to respond to disciplinary inquiries allegation, it alleged the attorney failed to file federal and state tax returns within the time required by law and/or failed to pay certain federal and state taxes when due for several years in violation of 26 U.S.C. § 7201 and/or 26 U.S.C. § 7203 and/or § 15-30-321, MCA. ODC alleged that his conduct constitutes criminal acts that reflect on his honesty, trustworthiness, or fitness as a lawyer in other respects; conduct involving dishonesty, fraud, and deceit; and conduct prejudicial to the administration of justice. The attorney was on probation at the time the formal complaint was filed. He failed to file an Answer to the formal complaint, resulting in an admission to all allegations of the formal complaint. A formal default hearing was held before the COP, and the attorney did not appear. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 8.1(b), MRPC. It did not find that he violated Rules 8.4(c) or 8.4(d), MRPC, for his failure to file state and federal tax returns and his failure to pay federal taxes. The COP recommended the attorney be indefinitely suspended for a period of not less than seven months. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended the attorney from the practice of law for a period of not less than seven months. *In re Chris J. Nelson*, MT PR 10-0577 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney was hired to represent her client in a dissolution matter. The complaint alleged the attorney failed to file an income and expense disclosure and proposed property distribution; failed to appear at two hearings; failed to respond to discovery requests; failed to respond to a motion to compel; failed to respond to a motion for sanctions, resulting in sanctions against her client and an entry of default with the marital property to be distributed as proposed by the opposing party; failed to inform her client of the pending motions and the order leading to entry of her default; failed to communicate with her about her case and abandoned her; and failed to respond to the informal complaint filed against her with the ODC, despite several opportunities to do so. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 3.2, 3.4, and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than six months, be placed on probation, during which she must comply with certain conditions, and pay the costs of the disciplinary proceedings. *In re Ann German*, MT PR 10-0428 (2011).

Failure to respond to disciplinary inquiries. Attorney was retained to assist his client with a violation of a Restraining Order or Order of Protection, involving the client's ex-wife and minor children. He was also later hired to assist his client in obtaining visitation and contact rights concerning his minor children. After the client's ex-wife died, her brother and his wife petitioned to be appointed co-guardians and co-conservators for the children. The attorney contacted opposing counsel prior to the guardianship hearing to advise that there would be no objection to

the guardianship, and the petitions were granted. The attorney subsequently filed proposed parenting plans with the district court. Despite notification by the clerk of court that a motion or petition is required to be filed along with the proposed plans, he failed to do so. He did nothing further to assist his client to obtain visitation or contact rights regarding his minor children. The attorney failed to respond to an informal complaint filed against him with the ODC, despite ODC's two requests for a response. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, and failure to respond to disciplinary inquiries. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, and 8.1(b), MRPC. The COP recommended the attorney be publicly censured by the Court, be placed on probation for two years, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and publicly censured the attorney, placed him on probation for two years, subject to certain terms and conditions, and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 09-0224 (2011).

Failure to respond to disciplinary inquiries. Attorney was hired to handle a divorce case and received a \$1,400 retainer, but he did not communicate the scope of his representation and the basis or rate of the fee to the client in writing. He filed a Petition for Dissolution and Proposed Interim and Final Parenting Plan on her behalf the following day. Two months later, he provided the documents to a private process server to have his client's husband served with the divorce papers, but the process server was unsuccessful. The attorney's secretary personally served the client's husband one month later and signed an Affidavit of Service, which was never filed with the Clerk of Court. The client subsequently discharged the attorney and finished the divorce herself. She made numerous requests to the attorney for a refund of her retainer and for her file, to no avail. The attorney did not refund any portion of the client's retainer until after she filed for fee arbitration with the Montana State Bar Association's Fee Arbitration Board and obtained an award of \$1,200. During its investigation, ODC sent the attorney two requests for additional information, but he failed to respond. The ODC filed a formal complaint alleging failure to provide his client with competent representation, failure to act with reasonable diligence and promptness in representing his client, failure to make reasonable efforts to expedite litigation consistent with the interests of his client, failure to communicate the scope of the representation and the basis or rate of the fee to the client in writing, failure to withdraw as counsel of record after he was discharged, failure to return client files as requested and/or failure to take steps to protect his client's interests and/or failure to timely refund unearned fees, and failure to promptly and fully respond to disciplinary inquiries. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.1, 1.3, 1.5, 1.16, 3.2, and 8.1, MRPC. The COP recommended the attorney be suspended from the practice of law for a period of 60 days, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in their entirety and suspended the attorney for 60 days and ordered him to pay the costs of the disciplinary proceedings. *In re Roy W. Johnson*, MT PR 10-0087 (2011).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The allegations in the formal complaint include the following. The attorney did not return his client's phone calls, had not refunded unearned fees, had not returned the client's documents, did little or no work on his client's matter, failed to respond to disciplinary inquiries, failed to comply with the terms of his disciplinary probation in violation of the Montana Supreme Court's disciplinary order, and failed to comply with Rules 30 and 32, RLDE (2002), after he was suspended from the practice of law by the Montana Supreme Court. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), and 8.1, MRPC. Following a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney's current suspension from the practice of law be extended to a minimum of four years, that he pay \$6,000 with interest in restitution to his client and return all of the client's documents, and pay the costs of the disciplinary proceedings. *In re R. Clifton Caughron*, MT PR 09-0488 (2010).

Failure to respond to disciplinary inquiries. Attorney was retained to evaluate potential claims against an electrical contractor. The client paid a \$500 retainer. The issue with the contractor resolved, and the client terminated the attorney-client relationship. He requested the return of his file and a refund of his retainer; he subsequently requested an accounting of the fee. The attorney did not respond. The attorney failed to respond to the informal complaint filed against her with the ODC, despite ODC's requests for response. The attorney failed to notify opposing counsel of her suspension from the practice of law ordered by the Montana Supreme Court and failed to file an affidavit attesting to her compliance with the Court's disciplinary order. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney did not appear. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.16(d), 3.4, and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and disbarred the attorney from the practice of law in Montana and ordered her to pay the costs of the disciplinary proceedings. *In re Marla J. Drozdz*, MT PR 09-0383 (2010).

Failure to respond to disciplinary inquiries. Attorney failed to respond to three informal complaints filed against her with the ODC as well as multiple other communications from the ODC, despite ODC's numerous requests. The ODC filed two formal complaints alleging, among other things, failure to respond to disciplinary inquiries. A formal hearing was held before the COP. The COP then submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered that the attorney be suspended from the practice of law in Montana for 30 days for violating Rule 8.1(b), MRPC, because she failed to respond to the ODC's inquiries. *In re Diane Keefauver*, MT PR 06-0255 and MT PR 06-0698 (2010).

Failure to respond to disciplinary inquiries. Attorney was retained to represent a client regarding a personal injury claim; the client paid him a \$6,000 retainer. Three years later, the District Court issued an Order to Show Cause Why Case Should Not Be Dismissed. After the Clerk of Court sent a copy of the Order to the attorney's office, it was returned as non-deliverable. The attorney failed to notify the Court of his change of address. The Court

subsequently dismissed the action for failure to prosecute. The dismissal order was sent to the attorney at the same address and was not returned. The attorney later contacted opposing counsel and at that time learned of the Order of dismissal. He advised that he would be filing a motion to reinstate the action. Two years later, he filed the motion. A hearing was held, and the Court denied the Motion to Reinstate Claim. The attorney filed a Notice of Appeal, which was dismissed because he did not timely file an opening brief. The client requested the original or a copy of the file; the attorney failed to comply and failed to account for the retainer the client paid him. The attorney failed to respond to the informal complaint filed against him with the ODC despite ODC's two requests for a response. In a second matter, the attorney also failed to respond to ODC's two requests for a response. The attorney failed to file an Answer to the formal complaint ODC filed against him. A default hearing was held before the COP, and the attorney appeared at the hearing. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for 30 days and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re R. Allen Beck*, MT PR 09-0227 (2009).

Failure to respond to disciplinary inquiries. Attorney failed to respond to the informal complaint filed against her with the ODC despite ODC's two requests for a response. The ODC filed a Formal Complaint; the attorney failed to file an Answer; and, a default hearing was held before the COP. The COP then submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered that the attorney be suspended from the practice of law in Montana for not less than seven months and to pay all costs of the disciplinary proceedings for violating Rule 8.1(b), MRPC, and Rule 8A(6), MRLDE, because she failed to respond to the ODC's inquiries. *In re Marla J. Drozd*, MT PR 08-0180 (2009).

Failure to respond to disciplinary inquiries. Attorney was retained to defend a client in a lawsuit filed against her by her former landlord for damages to a rental property. At trial, the Court directed counsel to file briefs regarding the lease at issue. The attorney failed to file a brief or to respond to the Plaintiff's brief. The Court awarded the Plaintiff damages and attorney fees for over \$13,500 with interest. After the Judgment was entered, the client requested a copy of the brief the attorney filed on her behalf. He faxed the client a Brief in Opposition to Term Lease that included a Certificate of Service, indicating it had been mailed to opposing counsel. The brief was not filed with the Court nor did opposing counsel receive a copy. In this matter and in a separate matter, the attorney failed to respond to the informal complaint filed against him with the ODC, despite ODC's requests for response. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney appeared. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.3, 3.4(c), 8.4(c) and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and suspended the attorney from the practice of law in Montana for a period of 90 days and ordered him to pay the costs of the disciplinary proceedings. *In re Marvin E. Alback*, MT PR 09-0222 (2009).

False statements in disciplinary proceedings. Attorney was contacted by a Louisiana firm to assist in representing two out-of-state clients, who were involved in a motorcycle accident in Montana. The clients entered into a written contingency fee agreement with the Louisiana firm for a 1/3 fee with the firm responsible for litigation costs. The attorney filed the lawsuit and tried the case to verdict in Montana. The jury awarded the clients \$869,990, and the defendants' insurance carrier satisfied the judgment. After he received judgment proceeds, the attorney communicated directly with the clients and distributed to them two-thirds of the judgment proceeds less the litigation costs. The reduction was in conflict with the written contingency fee agreement between the clients and the Louisiana firm. The attorney then paid himself what he perceived to be the uncontested portion of the fees owed to him pursuant to the communications between the firms, plus the litigation costs, and placed the remainder of the attorney fee portion of the judgment in his trust account. The attorney later paid the remaining portion to the District Court as part of an interpleader action he filed. The fee dispute between the Louisiana firm, the attorney and the clients went to litigation resulting in a settlement agreement whereby the attorney and the Louisiana firm received an agreed share of the attorney fees and the clients were reimbursed the litigation costs that the attorney initially disbursed to himself. At the disciplinary hearing, the attorney and the Louisiana firm disputed the existence and nature of communications between him and the Louisiana firm regarding their fee-splitting arrangement, which was not reduced to writing. The attorney asserted that he had entered into an oral contingency fee agreement with the clients. He also took the position that he did not have any understanding with the Louisiana firm about a division of attorney fees, that he was unaware that the clients had signed a written fee agreement with the Louisiana firm and that the clients had advised him they did not have a fee agreement with the Louisiana firm. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 8.1 and 8.4(d), MRPC, for knowingly making false statements in a disciplinary matter and for engaging in conduct that is prejudicial to the administration of justice by way of his representations to Disciplinary Counsel and the COP about his asserted oral fee agreement with the clients. The Court ordered the attorney to appear before it to receive a public censure and to pay all costs of the disciplinary proceedings. *In re Oaas*, MT PR 07-0241 (2008).

Failure to respond to disciplinary inquiries. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is

conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Failure to respond to disciplinary inquiries. Attorney was retained by two clients to represent them in their dissolution matters. The first client paid the attorney a \$400 retainer, plus \$190 for filing fees and despite numerous attempts to contact the attorney, never heard from him again. The second client paid the attorney \$1,250, and the attorney filed the Petition for Dissolution and served the respondent. After the respondent returned the Acknowledgment of Service form, the attorney failed to file it with the Court. He abandoned his client, failed to communicate with her despite her numerous attempts to contact him, and failed to protect her interests, including, but not limited to, returning his unearned fees. The attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d) and 8.1(b), MRPC. The Court extended the attorney's existing suspension for two additional years and ordered him to pay the costs of the disciplinary proceedings. Any reinstatement is conditioned on his refund of \$400 to the first client and \$1,000 to the second client. *In re J. Stuart Bradshaw*, MT PR 06-0419 (2007).

Failure to respond to disciplinary inquiries. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees. The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return

his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d), 8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0519 (2007).

Failure to respond to disciplinary inquiries. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Drafting false affidavit and submitting to various authorities, failure to act or disclose false information. Attorney was retained by a client to defend her against felony criminal charges of fabricating physical evidence and threats of other improper influence. The client was convicted. A few days after trial, the client faxed a document that she received and believed incriminated the victim of her crime and exculpated her. The attorney's paralegal persisted in wanting to send the fax to the prosecutor, and the attorney told her "I don't care what you do with it" so she faxed it. An investigator for the State of Montana initiated an investigation surrounding the creation and distribution of the fax. The State's investigation led to additional charges filed against the client for tampering with or fabricating physical evidence, which resulted in the State's search of the client's residence. The State then interviewed the attorney's paralegal, and she gave a statement to the prosecutor and the State's investigators. The attorney represented his paralegal during the interview. The paralegal made a number of false statements during the interview, and at no time during the interview did the attorney attempt to correct her or set the record straight. The attorney later drafted an affidavit for his paralegal to sign, which contained a number of false statements, including the fact that she sent the fax by mistake and that she did not advise anyone that she had sent the fax. The paralegal states the attorney advised her to make the false statements, and the attorney admits the affidavit contains at least one falsehood. The attorney represented to the district court, ODC and the Commission on Practice that the document was inadvertently faxed even though he admitted he told his paralegal that he didn't care what she did with the document. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 3.3, 3.4(b), 4.1(a), 8.1 and 8.4, MRPC and ordered the attorney receive a public censure and pay costs of the proceedings. *In re Hoovestal*, MT 05-094 (2007).

Failure to respond to disciplinary inquiries. The attorney became the subject of an investigation by the Office of Disciplinary Counsel (ODC). The attorney failed to respond to requests for information or documents concerning a matter of lawyer discipline twice. The Commission on Practice issued an *Order to Show Cause* ordering the attorney to appear before the Commission. The attorney failed to appear before the Commission. The Montana Supreme

Court found clear and convincing evidence that the attorney violated MRPC Rule 8.1(b) by failing to respond to the ODC's inquiries and the COP's *Order to Show Cause*. The Court also found that the attorney violated MRLDE Rule 8A(6). The Court ordered the attorney be suspended from the practice of law for 60 days and be assessed with the costs of the disciplinary proceedings. *In re Drozd*, MT 04-726 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 8.5, 8.1(b), and 3.3(d) and to other allegations set forth in the formal complaint filed against him by the COP. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney disciplined through public censure by the Montana Supreme Court, prohibition from seeking admission to the State Bar of Montana for one year, and assessment of costs of the proceedings expended by ODC and COP. *In re Neidhardt*, MT 05-476 (2006).

Failure to respond to disciplinary inquiries and return client's file. The attorney failed to respond to the complaint filed against him with the Office of Disciplinary Counsel (ODC) despite two requests for a response. The Commission on Practice ordered the attorney to appear and show cause why discipline should not be imposed. The attorney failed to appear at the show cause hearing as well. Further, the attorney failed to return a client's file despite the client's request and an order from the district court. The Montana Supreme Court found that the attorney failed to respond to disciplinary inquiries, failed to appear to show cause, and failed to return a client's file despite a court order. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.16(d), 3.4(c), and 8.1(b). The Court ordered the attorney be indefinitely suspended from the practice of law for not less than one year and be assessed with the costs of the disciplinary proceedings. *In re Moses*, MT 04-873 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

Failure to respond to the Office of Disciplinary Counsel. Attorney was hired to represent landowners in a condemnation action. When he failed to respond to his client's attempts to contact him, a complaint was filed with the ODC. The ODC's initial inquiries were ignored by the attorney, resulting in a Show Cause Order. The attorney promised to be more responsive to ODC's inquiries at the Show Cause hearing, but subsequently failed to respond to ODC's phone calls or letters. The attorney was also untruthful when he informed the ODC that he had

consulted his clients about a “strategic decision” not to oppose a motion *in limine* when he, in fact, had not. The Montana Supreme Court determined the attorney had violated Rule 8.1(b), MRPC, by failing or refusing to respond truthfully to ODC’s inquiries. For this and other violations, the Court suspended the attorney for a fixed term of seven months, ordered him to pay the COP and ODC’s costs of disciplinary proceedings, and required him to file an affidavit with the Court within 20 days of the effective date of suspension, showing his compliance with the order. When the attorney failed to pay the ODC’s costs or file the necessary affidavit, the Court indefinitely suspended him until he complied with the requirements of Rule 32, RLDE, at which point his initial seven-month suspension would begin. *In re LaPanne*, MT 04-325 (2005).

Failure to respond to ODC inquiries. Attorney represented a client in his appeal of a criminal conviction. Client filed a complaint with the ODC after the attorney failed to file appellate briefs, failed to inform the client of the status of his appeal, and did not respond to the client’s inquiries about his case. During ODC’s investigation, the attorney failed to respond to ODC inquiries regarding the client’s complaint on three separate occasions. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 8.1(b), MRPC, and other violations from a pending informal matter with the ODC. He acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney’s license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney’s admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC’s costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Failure to respond to ODC inquiries. Several complaints were filed against the attorney by clients in probate matters. During the course of investigating the complaints, ODC requested information and documents from the attorney. The attorney failed to provide them in a timely manner and requested an extension. When the extended deadline passed with no response, a hearing was scheduled for the attorney to show cause as to why he should not be disciplined for his failure to respond to inquiries from a disciplinary authority. The attorney failed to appear for the Show Cause hearing and did not pay a previous assessment of costs imposed by the COP. Consolidating this matter with two other disciplinary matters, the Montana Supreme Court suspended the attorney from the practice of law for not less than one year and ordered him to pay the costs of proceedings against him. *In re J. Stuart Bradshaw*, MT 05-095 (2005).

Failure to respond to disciplinary inquiries. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rules 1.1, 1.3 and 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a year for this and other conduct violative of the MRPC. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to

practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC. After a formal complaint was filed, the attorney tendered his admission pursuant to Rule 26, MRLDE, for violating these rules and Rule 8.1 for failing to respond to disciplinary inquiries. The Commission recommended the Court adopt the attorney's tendered admission. The Court adopted the tendered admission and placed the attorney on probation for five years, subject to certain terms and conditions, including, but not limited to, resignation of his law license. *In re Wing*, MT 03-585 and MT 04-872 (2005).

Failure to respond to the Commission on Practice. Attorney was hired to represent client in an uncontested dissolution of marriage in December 2001. In September 2002, the Commission on Practice ordered the attorney to provide it with a plan to complete the dissolution the following month. The attorney failed to do so. When ordered to explain himself, the attorney failed to respond to the Commission. The attorney tendered his admission to misconduct pursuant to Rule 26, MRLDE, and admitted violating Rule 8.1, MRPC, when he failed to respond to the Commission on Practice. The Commission reviewed the tendered admission and recommended adoption to the Montana Supreme Court. The Court adopted the admission and subjected the attorney to a public censure. *In re Harrington*, MT 03-112 (2004).

Repeated failures to respond or show cause. Attorney failed to respond to inquiries by the Commission on Practice on two separate matters, and failed to appear in response to two separate show cause orders. The attorney also failed to appear and show cause in a third unrelated criminal matter in which the Montana Supreme Court ordered the attorney to appear and show cause why he should not be referred to the Commission for failing to prosecute his client's appeal. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 6, RLDE. The Montana Supreme Court adopted the Commission's recommendations and indefinitely suspended the attorney for a period of not less than five years. *In re Thompson*, MT 01-835 (2001).

Failure to respond and failure to show cause explained but not justified. Attorney provided explanation for his failure to respond to inquiries from the Commission on Practice and his failure to appear in response to an Order to Show Cause that he was suffering from a major depressive disorder. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 6, RLDE. The Montana Supreme Court adopted the Commission's recommendations and disbarred the attorney for this and other violations. *In re Beccari*, MT 01-164 (2001).

Failure to respond and failure to show cause explained but not justified. Attorney provided explanation for his failure to respond to inquiries from the Commission on Practice and his failure to appear in response to an Order to Show Cause that it was hard for him to deal with difficult issues and that he had commenced a course of therapy to address the matter. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 6, RLDE, and that the attorney "has serious problems in independently maintaining and conducting the practice of law." The Montana Supreme Court adopted the Commission's recommendations and suspended the attorney for a period of not less than six months, with reinstatement conditioned on treatment and counseling. *In re Beccari*, MT 01-018 (2001).

Failure to respond to Commission on Practice and failure to show cause. Attorney provided no explanation, justification or excuse for his failure to respond to two separate inquiries from the Commission on Practice or his failure to appear in response to two separate Orders to Show Cause. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 6, RLDE. Noting that the attorney had been publicly suspended on two prior occasions, the Montana Supreme Court adopted the Commission's recommendations and suspended the attorney for a period of not less than one year. *In re Pratt*, MT 00-606 (2001).

Failure to respond and failure to show cause. Attorney provided no explanation, justification or excuse for his failure to respond to inquiries from the Commission on Practice or his failure to appear in response to an Order to Show Cause. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 7, RLDE. The Montana Supreme Court adopted the Commission's recommendations and suspended the attorney for a period of thirty days for his "unwillingness or inability to meet his professional responsibilities as a lawyer." *In re Thompson*, MT 99-684 (2001).

Failure to respond to Commission on Practice and failure to show cause. Attorney provided no explanation, justification or excuse for his failure to respond to six separate inquiries from the Commission on Practice or his failure to appear in response to three separate Orders to Show Cause. Without analyzing whether there was a violation of Rule 8.1, MRPC, the Commission on Practice determined this was a violation of the former Rule 7, RLDE. The Montana Supreme Court adopted the Commission's recommendations and suspended the attorney for a period of not less than six months. *In re Bradley*, MT 99-192 (2000).

RULE 8.2: JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the code of judicial conduct.

Making arguments regarding judge's qualifications or integrity without regard to truth or falsity. Attorney's law firm initiated a bad faith lawsuit in U.S. District Court against the insurance company that offered a global settlement on behalf of their insured to seven plaintiffs, who had filed similar lawsuits against the insured defendant and others. All seven plaintiffs, six of which were represented by the firm in their respective lawsuits, accepted the settlement to be disbursed on a *pro rata* basis. The bad faith case was pursued on behalf of one plaintiff client, who initiated the first lawsuit, alleging the defendant acted in bad faith by failing to make a good faith offer to settle her claims in the underlying lawsuit. The acting attorney in the bad faith case was disqualified from acting as trial and deposition counsel in the litigation because she was witness to the settlement allocation proceeds between her multiple clients. The law firm's associate attorney entered his appearance to cover the deposition of his disqualified colleague and then advanced to primary litigator. After defendants moved for summary judgment, the attorney moved to recuse the judge arguing the judge asserted defenses favorable to the defendants and altered the disqualified attorney's deposition testimony to benefit the defendants; he further argued the judge relied on an extrajudicial source to create and assert a bad faith defense against his firm's client. The judge granted summary judgment, denied the request he be recused, and awarded attorneys' fees and costs against the attorney and his disqualified colleague. The attorney violated Rule 8.2(a), MRPC, by making arguments with reckless disregard as to the truth or falsity concerning the qualifications or integrity of the judge. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted in part and rejected in part after the attorney filed objections and ODC responded. For this and other misconduct, the Court ordered the attorney be publicly admonished by COP for violating Rules 3.1(a)(1) and (2), and Rule 8.2(a), MRPC. *In re Brian Miller*, MT PR 18-0139 (2019).

Making statements known to be false or with reckless disregard as to its truth or falsity concerning judge's integrity. Attorney appeared on her brother's behalf in their mother's guardianship matter. In pleadings, she made baseless allegations of unethical conduct against the joint conservator, the judge, and the guardian and made demeaning and unwarranted attacks regarding their services and integrity. The joint conservator was forced to defend himself against a lawsuit filed by the attorney, which the district court judge found frivolous. She made unsupported allegations of impropriety by the court; made unsupported allegations of criminal misconduct and false, misleading, and uncivil statements against the guardian; made false statements or statements made with reckless disregard as to their truth or falsity regarding the judge's integrity; and she presented no evidence in support of her affirmative defenses. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation

to the Supreme Court, which the Court accepted and adopted after the attorney filed objections. COP concluded the attorney's unsupported allegations and statements violated Rules 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. For this and other misconduct, the Court disbarred the attorney and ordered her to pay \$26,633.75 in costs of the disciplinary proceedings for violating Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Violating Canon 4, Judicial Code of Ethics, during election campaign for district judge. The attorney sent a mailer to county residents and placed advertisements against his incumbent opponent during his campaign for election to a district court judge position, all of which included knowingly false and reckless statements—including unsubstantiated claims that his opponent had presided as the judge in a case against the ex-boyfriend of the opponent's "cocaine and sex partner" and that his opponent had purchased illegal drugs from a 13-year-old child—that had a substantial likelihood of prejudicing pending legal proceedings. The attorney violated numerous provisions of Canon 4 of the Montana Code of Judicial Conduct, which applies to judicial candidates under Rule 8.2(b), MRPC, by knowingly, or with reckless disregard for the truth, making false statements and failing to take steps to ensure others did not make false statements during his election campaign. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court disbarred the attorney, consecutive with discipline imposed in PR 16-0245 and PR 16-0411, and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC, specifically stating that knowingly-made false statements and statements made with reckless disregard of the truth do not enjoy constitutional protection. The attorney's petition for re-hearing was denied, and his petition for writ of certiorari to the U.S. Supreme Court was also denied. *In re Robert C. Myers*, MT PR 17-0026 (2017).

Violating Canon 4, Judicial Code of Ethics, during election campaign for district judge. The attorney placed an advertisement during his campaign for election to a district court judge position in which he had a former client make representations about the attorney's opponent and his integrity that he knew to be false or made with reckless disregard for the truth. The attorney also provided a written statement to the local newspaper that included knowingly false and reckless statements about his opponent. The attorney argued his statements were free speech protected by the First Amendment. The attorney violated numerous provisions of Canon 4 of the Montana Code of Judicial Conduct, which applies to judicial candidates under Rule 8.2(b), MRPC, by knowingly, or with reckless disregard for the truth, making false statements and failing to take steps to ensure others did not make false statements during his election campaign. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for three years, consecutive with discipline imposed in PR 16-0245 and PR 17-0026, and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC. The Court specifically stated that knowingly-made false statements and statements made with reckless disregard of the truth do not enjoy constitutional protection. The attorney's petition for re-hearing was denied, and his petition for writ of certiorari to the U.S. Supreme Court was also denied. *In re Robert C. Myers*, MT PR 16-0411 (2017).

Impugning the Court's integrity. Attorney was retained to appeal his client's domestic relations case, which the Supreme Court dismissed for the attorney's failure to file an opening brief. He then unsuccessfully filed an untimely Rule 60 motion for relief in district court and a motion to disqualify the district court judge for his alleged bias. He issued a subpoena and served it on the presiding district court judge to be deposed in connection with the Rule 60 motion. The judge denied the Rule 60 motion, quashed the subpoena, and ordered the attorney appear and show cause why his conduct did not violate Rule 11, M.R.Civ.P. The judge opined the attorney's factual contentions had no evidentiary support, were not warranted by existing law, and most were not supported by argument. After the hearing, the judge opined the attorney's legal contentions were not supported by legal authority; he failed to make good faith legal arguments; used highly inflammatory language to make baseless accusations of conspiracy, fraud, bias, unethical behavior and illegal acts against numerous people, including the judge; filed his motion to harass the adverse party, her attorneys, witnesses, the Court and court staff; and, asserted baseless factual contentions impugning the Court's integrity and made baseless assertions against adverse counsel with reckless disregard for their truth or falsity. The Montana Supreme Court affirmed the District Court's Sanctions Order, and the attorney paid the \$10,000 sanctions. The attorney violated Rule 8.2(a), MRPC, by making statements about the judge's integrity or qualifications with reckless disregard for their truth or falsity. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months, consecutive with discipline imposed in PR 16-0411 and PR 17-0026, and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 3.1(a), 3.5(c), 8.2(a), and 8.4(d), MRPC. The attorney's petition for re-hearing was denied, and his petition for writ of certiorari to the U.S. Supreme Court was also denied. *In re Robert C. Myers*, MT PR 16-0245 (2017).

False, baseless accusations about presiding judge in pro se post-divorce proceedings. (Reciprocal Discipline) Attorney was suspended by the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts, for a period of one year and a day, pursuant to the report filed by the Board of Bar Overseers. The report concerns the attorney's conduct while representing himself in post-divorce proceedings. The conduct in question involves his numerous disparaging statements concerning the integrity and qualifications of the presiding judge made throughout the proceedings and his filing of a civil complaint against the judge. The Board of Bar Overseers determined the attorney violated Rules 3.1, 8.2, 8.4(d) and (h) of the Massachusetts Rules of Professional Conduct, which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. Subsequently, the Montana Supreme Court ordered the imposition of identical discipline and suspended the attorney for one year and one day. *In re Daniel J. Harrington*, MT PR 12-0746 (2013).

False statements made about several judges in pleadings. Attorney was hired to represent a client in a dissolution of marriage case, which was long and contentious. Several District Court judges were assigned to the case, which eventually went before the Montana Supreme Court. The attorney filed various pleadings with the Clerk of the Montana Supreme Court wherein he made accusations of bias, misconduct, illegal activities, *ex parte* communications, false statements, retaliation, dishonesty and others. He also made statements in pleadings regarding the Standing Master's qualifications and character as a legal officer. The COP found that the

attorney made many inflammatory, false and reckless statements, which constituted nothing more than a personal attack, which not only impugn a judge's character, integrity and qualification as a judge, but also constitute a personal attack on him as a human being. The Montana Supreme Court accepted the COP's recommendations and imposed a public censure for violations of Rule 8.2(a), MRPC, and ordered the attorney to pay the costs of the proceedings. *In re Douglas*, MT 05-029 (2008).

Statement accusing judge of giving false testimony under oath made with reckless disregard for the truth. During the course of an administrative hearing to address the circumstances surrounding the attorney's discharge from her employment, a state district judge testified. When the hearing reconvened two months later, the attorney alleged the judge gave false testimony under oath. The attorney promptly qualified her testimony about the judge to describe the judge's testimony as merely inaccurate. The attorney also promptly sent a written apology to the judge. The attorney admitted her misconduct pursuant to a Rule 26, MRLDE, tendered admission, which was reviewed by the Commission on Practice. The Commission agreed the attorney violated Rule 8.2(a), MRPC, and recommended the Montana Supreme Court accept the admission. The Court suspended the attorney for six months and subjected her to a public censure for this and other professional misconduct. *In re Drew*, MT 04-417 (2004).

Baseless accusations against judge. Attorney appeared in a domestic dissolution before a state district court judge and was unhappy with the result. The attorney embarked on a campaign against the judge and his ex-wife's attorney. The attorney then alleged the judge destroyed court documents and evidence in his dissolution case and that the judge received "kick-backs" from his ex-wife in exchange for ruling in her favor. The attorney further alleged that the judge "fixed" his ethics complaint against his ex-wife's attorney. The Commission on Practice determined the attorney violated Rule 8.2, MRPC, and other rules of conduct. The Montana Supreme Court determined that clear and convincing evidence substantiated the Commission findings and indefinitely suspended the attorney for not less than two years. *In re Nascimento*, MT 02-778 (2004).

Attorney used vulgar language to describe state district court judge. During a search of a business owned by the brother of the attorney by agents from the Medicaid Fraud Unit, the attorney physically interfered with the agents, used a "barrage of profane language towards the agents," and referred to the state district court judge who issued the search warrant as an "asshole" who "sucks the government tit." The attorney admitted his misconduct and violation of Rule 8.2, MRPC. The Montana Supreme Court publicly censured the attorney and ordered him to complete an anger management course. *In re Vanio*, MT 99-559 (2000).

Accusations against judge made with reckless disregard as to the truth. An attorney representing a defendant in a publicized homicide case was unhappy with a discovery order contended to be prejudicial to the client. The attorney accused the judge of bias shortly before the trial was to begin, in an attempt to disqualify the judge. A hearing was held at which it was determined that the judge had acted properly. The attorney then hand-delivered a letter to the judge in his chambers, requesting the judge recuse himself. The letter was delivered shortly before a hearing was to have taken place. The Commission chastised the attorney for his conduct, writing he "should have used a scalpel, not a meat axe" in his reaction to the judge's

ruling and made an objection in writing. The Montana Supreme Court adopted the Commission findings that found the attorney violated Rule 8.2, MRPC, in that the allegations of bias were made with reckless disregard as to the truth concerning the judge's integrity and impartiality. The Court publicly censured the attorney for this and other violations. *In re Albers*, 98-011 (2000). The Montana Supreme Court rejected the attorney's constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable code of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Duty to report attorney misconduct. The Montana Supreme Court established that if attorney misconduct is severe enough to require collateral action, such as a motion to disqualify, it is also serious enough to report to disciplinary authorities. Because the state district courts do not have jurisdiction over ethical violations, the district courts cannot adequately remedy professional misconduct. *Schuff v. A.T. Klemens & Son*, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002 (2000).

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable code of judicial conduct or other law.

General Violations:

Misappropriation and mishandling client funds; failure to promptly deliver client funds; failure to promptly and fully respond to disciplinary inquiries or authorities. Attorney filed a lawsuit on his client's behalf regarding a personal injury claim. He settled the case for \$12,173.18 new money, and the insurer sent him check for that amount. He deposited the money into his trust account almost 16 months later and immediately wrote himself a check for fees and costs totaling \$937; however, he did not disburse any funds to his client. Within two months, he had withdrawn all of the settlement funds, using them for his own purposes. The client had made numerous inquiries about the status of the settlement proceeds. After the attorney received his client's grievance, he sent him a check for the entire amount of the new money settlement three years after receiving it from the insurer. In order to cover the check, he deposited \$12,500 into his trust account that same day. The attorney delayed responding to the grievance for six months after having to appear and show cause to the Commission for his failure to respond. After several months of requests, the attorney eventually provided his trust account records to ODC. ODC's requests for admission were deemed admitted after a motion to compel discovery was filed, and the attorney failed to respond or otherwise plead. Following a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.3, 1.15, 1.18, 8.1(b), and 8.4, MRPC, and Rule 8A(6), MRLDE. Upon the Commission's recommendation, the Supreme Court indefinitely suspended the attorney from the practice of law for one year and ordered him to pay the costs of the disciplinary proceedings. *In re Randy S. Laedeke*, MT PR 13-0321 (2014).

Failure to safekeep property; failure to return funds; withdrawing funds without knowledge or consent of the interested parties; disbursing funds without authorization; utilizing an out-of-state, non-interest bearing trust account; misappropriation of funds; making misrepresentations. Attorney drafted documents to implement certain investment programs, which were promised to result in substantial returns on the capital. He also met with several potential investors to explain the implementation and participation documents. He represented certain individuals and their entities who participated in the investment programs, along with

several others. The funds paid to invest in the programs were deposited into a trust account established by the attorney. The investors were assured the funds would not be used or depleted and would be repaid with a return of between 300% and 400% within one year. Investors were to receive quarterly returns on their money, and the attorney was responsible for transferring funds and remitting payments to investors. The attorney told investors that the funds would be held in trust and not transferred or removed without their permission. The attorney incidentally established two separate trust accounts at a bank outside the state of Montana. His legal fees and expenses were paid from one of the trust accounts. The attorney made several unauthorized transfers to and between the trust accounts he controlled – the money of which belonged to either clients or investors – and made unauthorized payments from those accounts to third parties. The transactions were not for the benefit of his clients or the investors. When investors demanded the return of their money, the attorney did not have sufficient funds in the account and did not return the money. Investors filed lawsuits against the attorney and obtained judgments, some of which had not been satisfied. The attorney attempted to delay, confuse, and avoid admission of his misappropriation of funds. After finally admitting to the misappropriation, he asserted that he did not benefit personally; however, he received nearly \$168,000 over a 16-month period for fees, costs, and expenses. The ODC filed a formal complaint alleging the attorney knowingly used funds held in trust for an improper purpose and without the knowledge or consent of the owners of the funds; misled investors when they sought information regarding funds held in trust; personally benefitted by paying himself with trust funds while holding off requests of investors for information or return of their funds; misappropriated funds of an investor without its knowledge, consent, or permission; failed to maintain funds in an interest-bearing trust account; and failed to maintain funds with a Montana bank. After a formal hearing before the COP, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.15(a), 1.18, and 8.4, MRPC. The COP recommended the attorney be disbarred from the practice of law, pay restitution to two of the investors if he were to seek reinstatement, and be assessed the costs of the proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation and disbarred the attorney from the practice of law, ordered him to pay restitution to two investors (\$550,000 to one and \$130,000 to the other) as a condition for applying for reinstatement, and pay the costs of the proceedings. *In re David P. Rodli*, MT PR 10-0412 (2011).

Failure to communicate; settled case without authority; failure to expedite litigation; failure to respond to discovery requests; failure to comply with court order; falsified documents; failure to seek and obtain expert opinion, resulting in case dismissal. (Reciprocal discipline) The North Dakota Disciplinary Board filed a Petition for Discipline regarding three separate matters wherein it alleged the following. Attorney represented a client to defend it in a civil action filed in Montana. The attorney failed to respond to the clients' insurer's status requests and failed to notify his clients of mediation. At the mediation, the attorney negotiated an \$80,000 settlement without his clients' or his clients' insurer's authority. The attorney personally funded the settlement, depositing the money into his firm's trust account to be remitted to opposing counsel. The attorney represented another client regarding a civil action filed against him in Montana. The attorney failed to keep his client informed of important events, deadlines and discovery obligations. The attorney appeared at the Court-ordered mediation without a responsible decision-maker, as ordered. As a result, the Court sanctioned the client and ordered him to pay

the plaintiff's costs incurred in attending the mediation. The attorney, thereafter, failed to respond to discovery requests. As a sanction, judgment was entered in favor of the plaintiff on liability; final judgment was entered against the attorney's client in the amount of \$143,713. The attorney falsely assured his firm that he had kept his client informed and falsified backdated letters so it appeared he had done so. The firm paid the judgment against the client. The attorney represented a plaintiff who sued a health care professional in North Dakota. The attorney failed to diligently seek and obtain an expert opinion, and the opposing party moved to dismiss the case. The Petition for Discipline alleged violations of Rules 1.2, 1.3, 1.4, 1.15 and 8.4, NDRPC. The attorney submitted a Consent to Discipline wherein he consented to suspension from the practice of law for six months and a day. The North Dakota Supreme Court accepted a Stipulation, Consent to Discipline and Recommendation of Hearing Panel and suspended the attorney from the practice of law in North Dakota for a period of six months and a day and ordered him to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2002), suspending the attorney from the practice of law in Montana for a period of six months and a day and ordering him to pay costs. *In re Shane D. Peterson*, MT PR 09-0416 (2009).

Failure to file appellate brief, conduct prejudicial to administration of justice, failure to expedite litigation, failure to comply with court orders, failure to respond to disciplinary inquiries. Attorney was retained by his client to handle his appeal before the 9th Circuit Court of Appeals. Attorney failed to file the appellant's opening brief by the deadline. The Court twice ordered the attorney to file the brief or to file a motion to withdraw, and the attorney failed to comply. The Court then ordered the attorney to show cause why monetary sanctions should not be imposed, to which the attorney failed to respond. The Court appointed new counsel and sanctioned the attorney \$500 for failing to comply with its orders. Attorney also failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney's conduct violated Rules 1.1, 1.3, 3.2, 3.4, 8.1 and 8.4, MRPC. The Court ordered the attorney's existing suspension be extended for two additional years and ordered him to pay the costs of the disciplinary proceedings. *In re Moses*, MT PR 06-0702 (2007).

Drafting false affidavit and submitting to various authorities, failure to act or disclose false information. Attorney was retained by a client to defend her against felony criminal charges of fabricating physical evidence and threats of other improper influence. The client was convicted. A few days after trial, the client faxed a document that she received and believed incriminated the victim of her crime and exculpated her. The attorney's paralegal persisted in wanting to send the fax to the prosecutor, and the attorney told her "I don't care what you do with it" so she faxed it. An investigator for the State of Montana initiated an investigation surrounding the creation and distribution of the fax. The State's investigation led to additional charges filed against the client for tampering with or fabricating physical evidence, which resulted in the State's search of the client's residence. The State then interviewed the attorney's paralegal, and she gave a statement to the prosecutor and the State's investigators. The attorney represented his paralegal during the interview. The paralegal made a number of false statements during the interview, and at no time during the interview did the attorney attempt to correct her or set the record straight. The attorney later drafted an affidavit for his paralegal to sign, which contained a number of false statements, including the fact that she sent the fax by mistake and that she did not advise anyone that she had sent the fax. The paralegal states the attorney advised her to make the false

statements, and the attorney admits the affidavit contains at least one falsehood. The attorney represented to the district court, ODC and the Commission on Practice that the document was inadvertently faxed even though he admitted he told his paralegal that he didn't care what she did with the document. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 3.3, 3.4(b), 4.1(a), 8.1 and 8.4, MRPC and ordered the attorney receive a public censure and pay costs of the proceedings. *In re Hoovestal*, MT 05-094 (2007).

Filing claim based on facts disputed by client. The attorney filed a complaint on behalf of two married couples alleging the defendant social workers and related organizations provided the plaintiffs poor and inaccurate marital advice, causing damage to their marital relations. In the context of a separate disciplinary action, one of the clients testified that she had informed the attorney that certain of the allegations contained in the complaint were untrue. The Commission brought a subsequent disciplinary action in connection with that testimony. The attorney admitted his misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 8.4, MRPC, by filing false pleadings or failing to take proper remedial measure after he discovered the falsity. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney (who was already indefinitely suspended) for an additional period of not less than nine months. *In re Sisler*, MT 01-557 (2002).

Misrepresentation to county attorney to get charges against client dropped. Attorney represented husband in a contested dissolution. The wife had her own counsel of record. During the course of the dissolution, the attorney spoke with the wife regarding a temporary order of protection she had obtained pro se, and criminal charges she had filed against him. The attorney then made a conference call with the wife to the county attorney's office advising them that the wife had dropped the divorce and TRO and requested that the criminal charges be dropped. The Commission determined that this statement was not true and in violation of Rule 8.4, MRPC, because the dissolution had not been dropped. For this and another violation of the MRPC, the Montana Supreme Court indefinitely suspended the attorney for a period of not less than three months. In a subsequent order, the Court indicated that because the suspension was indefinite, the attorney would be required to petition for reinstatement. *In re Sisler*, MT 00-125 (2001).

Failure to return unearned portions of retainer/misrepresentations to client. Attorney was hired to represent a Florida man in a paternity and child support matter. The client underwent DNA testing at the request of the attorney and the state Child Support Enforcement Division that showed he was not the father of the child for whom he was paying support. The attorney thereafter failed to take action on behalf of his client. No court proceedings were undertaken, though the attorney represented to his client that he had spoken to a district judge about the matter and the court had determined the client was not the father of the child. Eventually, the client learned from the court clerk that no proceedings had been filed and demanded the return of his retainer, which was not returned. The Commission on Practice determined the attorney's conduct violated Rule 8.4, MRPC, as well as other rules of professional conduct. The Montana Supreme Court upheld the Commission's findings and suspended the attorney for an indefinite period of not less than seven months. *In re Lape*, MT 99-681 (2001).

Suspended lawyer practicing law in violation of prior disciplinary order. The Montana Supreme Court suspended the attorney from the practice of law for an indefinite period of time. During his suspension, the attorney prepared a will and a power of attorney for a “client.” The Commission on Practice found the attorney’s conduct violated Rule 8.4, MRPC, for “acting in defiance of the disciplinary Orders of the Montana Supreme Court and by practicing law while suspended from practice by Order of the Montana Supreme Court.” The Commission wrote the lawyer’s actions “further underscore his absolute disregard for and disdain of the Orders of the Montana Supreme Court and the Rules of Professional Conduct.” The Montana Supreme Court adopted the Commission’s findings and disbarred the attorney. *In re Quinlan*, MT 97-378 (1998).

Making misrepresentation to former client’s new counsel about status of funds. Attorney was retained to defend clients in a nonjudicial foreclosure on their residence and to bring claims against the foreclosure trust beneficiaries for misrepresentations made about the subject property. Attorney filed a civil action on behalf of his clients and obtained an agreement that foreclosure would be stalled until the civil action was resolved. The action was filed on the condition that the clients would deposit for the attorney’s control the remaining balance of the purchase price due on the secured obligation. The money was then deposited into an interest-bearing account under the attorney’s name as trustee for his clients. The clients later became dissatisfied with the attorney’s services and retained other counsel. The new attorney demanded the security deposit, but the former attorney refused to give it to him, arguing that it was placed in a time deposit. This argument was found to be false and misleading. The attorney delayed disbursement of the funds and later gave the new attorney a personal check for the amount. Attorney was suspended for five months for violations of Rule 8.4, MRPC, and other rules of professional conduct. The Commission did not specify a subsection of 8.4 in its findings. *In re Atherton*, MT 96-655 (1997).

Attorney was dishonest and deceitful in misrepresenting his abilities. The attorney represented American families who sought to adopt foreign infants from Macedonia. The Commission on Practice found the attorney misled his clients as to the availability of infant children for adoption and the prevailing attitude of the Macedonian government toward foreign adoptions. The Commission also found the attorney misled his clients about his ability to secure such adoptions. The Montana Supreme Court disbarred the attorney for violating several rules of professional conduct, including Rule 8.4, MPRC. *In re Alexander*, MT 94-358 (1995).

Contempt and disrespectful conduct towards judge. Following a discussion in the attorney’s office with a justice of the peace, the attorney called the judge, “a lying son-of-a-bitch,” grabbed his arm, spun him toward the door and pushed him towards it. The attorney apologized to the judge later that day. The Commission on Practice found clear and convincing evidence that the attorney’s conduct violated Rule 8.4, MPRC, and was prejudicial to the administration of justice. The Commission did not cite a specific subsection of 8.4. The Montana Supreme Court suspended the attorney for not less than one year for this and other violations of the MRPC. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney’s petition for reinstatement.)

Failure to Respond to Disciplinary Inquiry. Attorney failed to respond to informal inquiries by the Commission on Practice and failed to appear in response to a show cause order. The Commission found that these were the third and fourth instances of the attorney's failure to cooperate, citing former Rule 7(f), RLDE, but no specific Rule of Professional Conduct. The Montana Supreme Court adopted the Commission's findings and issued a public censure and 120-day suspension. *In re Quinlan*, MT 92-546 (1994).

8.4(a):

Knowingly assisting or inducing another attorney to violate MRPC. Attorney represented the husband as an interested party in appellate and post-remand matters in his wife's pending guardianship proceedings. His wife was judicially determined to be incapacitated and was appointed guardians and an attorney, who also had the powers and duties of a guardian *ad litem*. The attorney's client was deemed not suitable to be his wife's guardian, and orders regarding visitation and attorneys' fees awards had been entered. The attorney was unsuccessful in obtaining additional visitation rights for her client, in challenging the orders by which her client was not appointed his wife's guardian, and in challenging the award of spousal support and attorney fees. After the district court's orders were affirmed on appeal, the attorney sought surrogates, including Disability Rights Montana ("DRM") and another attorney, to represent her client's wife without disclosing to them she was already represented by a court-appointed attorney. The surrogate attorney contacted her purported new client on more than one occasion without the knowledge or consent of her court-appointed attorney, the guardians' counsel, or the district court. The surrogate attorney also entered into a limited scope attorney-client agreement with the husband without seeking or obtaining consent to the conflict or the agreement from any party. The husband's first attorney, who consented to the representation, would remain as the sole point of communication between her client and the surrogate; she also assisted the surrogate in drafting pleadings. The attorney used the surrogate attorney's purported representation of the wife to pursue expanded visitation for the husband. The attorney violated Rule 8.4(a), MRPC, by knowingly assisting and/or inducing the surrogate attorney to violate the MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted after the attorney filed objections. For this and other misconduct, the Court indefinitely suspended the attorney for a minimum of seven months and ordered her to pay costs of the disciplinary proceedings for violating Rules 4.2(a), 8.4(a), and 8.4(d), MRPC. *In re Tina L. Morin*, MT PR 17-0448 (2019).

Knowingly violating the Rules of Professional Conduct. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board found the attorney made numerous false statements of fact to the court during the lawsuit and further offered evidence to the Board he knew to be false; knowingly disobeyed his obligation under the rules of a tribunal by failing to prepare and approve orders of the court as directed; made frivolous discovery requests and failed to make reasonably diligent efforts to comply with the former clients' legally proper discovery requests; used means that had no other purpose than embarrassing, delaying, or

burdening the former clients; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation during the lawsuit; and engaged in conduct that is prejudicial to the administration of justice. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court suspended the attorney from practicing law in Montana for a period of nine months for violating Montana's similar or equivalent Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

Attempting to coerce complainant to settle and release claims against attorney and client and withdraw ethics grievance. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. Between October 2008 and March 2010, the attorney paid himself \$183,100 when he was only entitled to \$120,000 in attorney fees. He also made other disbursements, including approximately \$51,000 to his client or others on her behalf, \$30,500 to his client's non-attorney advocate, and \$32,524 to others for litigation expenses. No funds were disbursed to the other heirs. By the end of June 2010, the attorney's trust account balance was \$10.47. The personal representative, an heir of the estate, filed an ethics grievance against the attorney, who failed to cooperate with ODC's investigation. In January 2014, the attorney misrepresented to the personal representative he was holding \$60,000.00 in his IOLTA trust account to be disbursed and misstated the law when he advised her she and the other heirs were only entitled to \$17,000 of the settlement funds. He further advised her that although the widow was entitled to 2/3 of the proceeds, she would compromise if the personal representative would sign a settlement agreement and release all claims against the widow and the attorney, including dismissing the grievance she filed against him with ODC. The attorney's attempt to coerce the personal representative to dismiss her grievance against him and settle with his client based upon his misstatement of the law constitutes violations of Rules 8.4(a) and 8.4(d), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the parties filed objections, with the exception of disgorgement of fees and the amount of restitution. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$65,547.10 to the other estate heirs, and pay costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Violation of the MPRC in course of representation. (Reciprocal Discipline) Attorney was disciplined by the Ethics and Discipline Committee of the Utah Supreme Court which provided ODC with copies of the relevant documents. The attorney was hired by the client to represent her in a real estate contract dispute. The attorney's various ethical violations included a failure to act with reasonable diligence, failure to communicate, and failure to properly withdraw as counsel. These violations constituted an additional violation of Rule 8.4(a), MRPC. The attorney was publicly reprimanded in Utah. Subsequently, the Montana Supreme Court ordered imposition of identical discipline and publicly censured the attorney for violations of several rules. *In re Musick*, MT 05-558 (2005).

Misleading statements regarding the status of the representation. The attorney submitted a tendered admission to a violation of Rule 8.4(a), (c) and (d), MRPC, by making false and misleading statements to his client about his work on the matter and the status of the matter, as

well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Frivolous attorney's lien. Attorney represented plaintiffs in a construction dispute. The case was subsequently settled and dismissed prior to any judgment. A dispute arose between the attorney and his clients over the fee. The attorney subsequently conceded the fee dispute and wrote a letter intended to write off the fee. The attorney then changed his mind and filed a Notice of Attorney's Fee Lien in a separate dissolution action that he was handling for one of the plaintiffs, which improperly included the amounts alleged to be owing in connection with the construction litigation. The attorney did not advise his client he had changed his mind about pursuing the fee in the construction case. The Commission on Practice determined that the attorney violated Rule 8.4(a), MRPC, by knowingly submitting a false lien. After rejecting certain factual findings, the Supreme Court adopted the Commission's recommendation and issued a public censure to the attorney for this and other violations. *In re Keedy*, MT 02-160 (2003).

Violation of the MPRC in course of representation. Attorney undertook representation of a client in a malpractice action against another lawyer. After requesting and receiving a retainer, the attorney failed to provide any legal services whatsoever to advance the malpractice claim, failed to refund the retainer, failed to communicate with the client for approximately two years and failed to provide the client with information that would allow the client to contact him. The Commission on Practice found violations of several rules of professional conduct as well as Rule 8.4(a), MRPC. The attorney was suspended indefinitely, for a period of no less than three years. *In re Bowles*, MT 98-719 (2000).

Violation of the MPRC in course of representation. Attorney was hired to represent homeowners in a construction dispute with their contractor. Attorney accepted service of a complaint filed against his clients but failed to notify the clients or file an answer. When a default judgment was entered against his client, the attorney failed to convince the court to set aside the default and mishandled an appeal to the Montana Supreme Court. Homeowners avoided having their home sold at a sheriff's auction by hiring a different attorney. The attorney was hired in a separate matter to represent a client who purchased property encumbered by liens at an auction despite representations to the contrary by the sellers. The attorney was hired in 1988 and told them a federal judge would hear the case in 1990, when no complaint had ever actually been filed on their behalf. The Commission on Practice and Montana Supreme Court found violations of several rules of professional conduct, including 1.1, 1.2, 1.3 and 1.4. As such, the Commission and Court also concluded the attorney had violated Rule 8.4(a), MPRC. *In re Johnstone*, MT 92-279 (1993).

8.4(b):

Felony Criminal Endangerment conviction affects attorney's fitness to practice law. Attorney pled guilty to one count of Felony Criminal Endangerment, and the District Court imposed a two-year deferred sentence, subject to terms and conditions of probation. After ODC filed a Rule 23 Petition with the Montana Supreme Court, the Court determined the attorney's criminal

conviction affected his ability to practice law, directed ODC to file a formal complaint, and, after providing him time to show good cause why interim suspension should be set aside with no response, placed him on interim suspension pending final disposition of a disciplinary proceeding. ODC filed a Complaint alleging the attorney violated Rule 8.4(b), MRPC, for his criminal conduct; the attorney filed an Answer; ODC filed an Amended Complaint, to which the attorney failed to Answer, resulting in his default. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than one year, ordered him to comply with his criminal probation conditions and pay costs of the disciplinary proceedings for violating Rule 8.4(b), MRPC. *In re James T. McCormack*, MT PR 21-0354 (2022).

Misdemeanor Obstructing a Peace Officer. Attorney was called to a crash site involving his girlfriend, who was being investigated for potential felony criminal endangerment and several misdemeanor charges. His girlfriend had been driving while under the influence of alcohol with two minor children in the vehicle, one of which was the attorney's child. After the girlfriend refused to provide a breath or blood sample, the highway patrol trooper obtained a telephonic search warrant to conduct a blood draw and transferred her to the detention center where she was placed in an ambulance. When the attorney arrived, he advised he was representing his girlfriend and requested to see the search warrant. He thereafter advised his girlfriend to not provide a blood sample, and she so refused, resulting in an Obstructing a Peace Officer charge against her. The attorney was also charged with Misdemeanor Obstructing a Peace Officer, was convicted by jury, and received a six-month deferred imposition of sentence with conditions, which was affirmed on appeal. The attorney violated 8.4(b), MRPC, by interfering with the police investigation, including committing a misdemeanor criminal offense of Obstructing a Peace Officer when he advised his girlfriend to not comply with a court-ordered search warrant. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. For this and other misconduct, the Court suspended the attorney from practicing law for 30 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 3.4(a) and 8.4(b), MRPC. *In re James Gardner*, MT PR 21-0100 (2021).

Felony Tax Evasion conviction affects attorney's honesty, trustworthiness, and fitness to practice law. Attorney was convicted by jury of two counts of Felony Tax Evasion in the U.S. District Court, District of Nevada. He was sentenced to 33 months in federal prison with three years of supervised release and ordered to pay a \$200 fine and restitution to the I.R.S. totaling \$728,786.14. His Montana law license was administratively suspended by the Montana State Bar for non-payment of dues in July 2013. The Nevada Supreme Court temporarily suspended his Nevada law license for his criminal convictions in July 2013 and referred the matter to the Nevada Disciplinary Board. The hearing board determined he violated Rule 8.4(b) for committing a criminal act that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer and recommended a four-year retroactive suspension; the Nevada Supreme Court agreed and ordered the same. After ODC filed a Rule 23 Petition, the Montana Supreme Court placed the attorney on interim suspension and directed ODC to file a formal Complaint. ODC filed the Complaint alleging the attorney violated Rule 8.4(b), MRPC, and the attorney submitted a

Conditional Admission and Affidavit of Consent admitting to the allegations. He agreed to a four-year suspension to retroactively begin on the date of his administrative suspension; resignation of his Montana law license and agreement to not appear in any Montana court in the future; required reapplication to the Montana State Bar if he wishes to resume the practice of law in Montana; if reinstated, the requirement to practice under a lawyer approved by ODC; and payment of costs of the disciplinary proceeding. After a Rule 26 hearing, COP submitted its Recommendation to the Montana Supreme Court, which the Court accepted and adopted and imposed the agreed upon discipline for violating Rule 8.4(b), MRPC. *In re Ian Christopherson*, MT PR 18-0264 (2019).

Felony DUI conviction affects attorney's honesty, trustworthiness, and fitness to practice law. Attorney pled guilty to one count of Felony Driving Under the Influence of Alcohol, 4th or Subsequent Offense. His criminal history includes six prior DUI-related offenses and avoiding jail time in most instances. The District Court sentenced the attorney to five years, DOC, all suspended, subject to thirty-two (32) terms and conditions of probation. After ODC filed a Rule 23 Petition with the Montana Supreme Court, the Court determined the attorney's criminal conviction affected his ability to practice law, placed him on interim suspension, directed ODC to file a formal complaint, and subsequently lifted the interim suspension after the attorney agreed to comply with his criminal probationary conditions without violation. ODC filed a Complaint alleging violations of Rule 8.4(b), MRPC, for committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. The attorney admitted all allegations in his Answer and submitted a *Conditional Admission and Affidavit of Consent*. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Supreme Court, reluctantly recommending the Court accept the *Conditional Admission* due to the attorney's lengthy history of alcohol abuse, which the Court, likewise, reluctantly accepted and adopted. The Court ordered the attorney be publicly censured by the Court, be placed on probationary status for ten (10) years with thirteen (13) conditions in addition to those imposed by the sentencing court, any violation of which shall result in his incarceration and immediate loss of his law license, and ordered him to pay costs of the disciplinary proceedings for violating Rule 8.4(b), MRPC. *In re David H. Bjornson*, MT PR 18-0035 (2018).

Felony Criminal Child Endangerment, Misdemeanor Aggravated DUI convictions affect attorney's fitness to practice law. Attorney pled guilty to one count of Felony Criminal Child Endangerment and one count of Aggravated Driving While Under the Influence. The District Court imposed a three-year deferred sentence on the felony count and a one-year sentence, with all but three days suspended on the misdemeanor count, to run concurrently, subject to terms and conditions of probation. After ODC filed a Rule 23 Petition with the Montana Supreme Court, the Court determined the attorney's criminal convictions affected her ability to practice law, placed her on interim suspension, directed ODC to file a formal complaint, and subsequently lifted the interim suspension after the attorney filed an Affidavit. ODC filed a Complaint alleging violations of Rule 8.4(b), MRPC, for her criminal conduct and conviction. After a hearing, COP issued its Findings of Fact, Conclusions of Law, and Decision, COP found the attorney violated Rule 8.4(b) and ordered she receive a letter of admonition from COP, be required to comply with all probation and parole requirements imposed by the district court and

be placed on probation for the ethical violations concurrent and consistent with those in the criminal proceedings. *In re Michele Braukmann*, MT PR 17-0269 (2017).

Theft of funds belonging to clients or third parties; forging client or third party signatures on settlement documents and/or checks; falsifying bank account and financial reporting documents. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney stole client or third party funds when he fraudulently acquired the funds during his representation of a client. He further lied to some clients or third parties about receiving funds, forged signatures, misappropriated funds for his own purposes, and lied to clients or third parties about the amount of funds owed to them. When acting as secretary/treasurer of ABOTA, he stole funds from the Montana Chapter and falsified bank account and financial reporting documents. By this conduct, the attorney violated Rules 1.15, 4.1, 8.4(b), and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent to the Supreme Court, which the Court accepted. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$495,328.14 (attorney fees were disgorged) for violating Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. *In re David M. McLean*, MT PR 14-0737 (2015).

Felony DUI and Failure to Give Notice of Accident convictions affect attorney's fitness to practice law. Attorney pled guilty to one count of Felony Driving Under the Influence of Alcohol and Fail to Give Notice of Accident. He was sentenced to a 13-month commitment to the Montana Department of Corrections with five years suspended, subject to terms and conditions of probation. After ODC filed a Rule 23 Petition with the Montana Supreme Court, the Court determined the attorney's criminal convictions affected his ability to practice law and placed him on interim suspension pending final disposition of a disciplinary proceeding. After ODC filed a Complaint alleging violations of Rule 8.4(b), MRPC, he requested his law license be transferred to disability inactive status. Upon the COP's recommendation, the Court granted the attorney's request and placed him on disability inactive status, effectively staying the disciplinary proceedings. *In re David Avery*, MT PR 15-0142 (2015).

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder

with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Conviction of Felony Negligent Vehicular Assault and Felony Criminal Endangerment affects ability to practice law and constitutes violation. Attorney was charged with four felonies in state district court in October 2009 for allegedly consuming alcohol and driving a school bus as a licensed commercial bus driver on public streets with 11 students on board the bus while impaired, failing to stop for a red light, striking and causing serious bodily injury to a pedestrian in a cross-walk, and leaving the accident scene without rendering aid. The attorney pled guilty to Felony Criminal Endangerment and Felony Negligent Vehicular Assault. He was sentenced to 72 months, with 18 months suspended, subject to certain terms and conditions of probation, and 100 hours of community service at a self help law center or other indigent program. The Montana Supreme Court found, pursuant to Rule 23, MRLDE, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rule 8.4(b), MRPC, and recommended he be disbarred. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Timothy J. Whalen*, MT PR 11-0084 (2013).

Federal conviction for felony conspiracy to maintain drug-involved premises affects ability to practice law and constitutes violation. Attorney joined four other individuals and formed a medical marijuana growth business with operations located in four Montana cities. He served as in-house counsel and became familiar with the legal requirements of medical marijuana growth operations. He participated in the business for approximately ten months. He lived on the premises for at least three months while guarding the property with a firearm. He disassociated himself from the business in January 2010. In March 2011, federal agents raided the grow operations and seized 950 marijuana plants, firearms, and examined bank records showing over \$1,000,000 in deposits. Because the attorney had only disassociated and had not legally withdrawn from the conspiracy under federal law, he was held accountable for activities both before and after he disassociated. The attorney pled guilty to Conspiracy to Maintain Drug-

Involved Premises in violation of 21 U.S.C. § 846. He was sentenced to three months home confinement, five years of probation subject to terms and conditions, and imposed liability for \$288,000 in forfeitures. The Montana Supreme Court found, pursuant to Rule 23, MRLDE, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rule 8.4(b), MRPC, and recommended the attorney be suspended for six months, be placed on probation for a term coextensive with his federal probation, and be assessed with the costs of the disciplinary proceedings. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Christopher J. Lindsey*, MT PR 13-0025 (2013).

Conviction of two felony counts of criminal endangerment and one misdemeanor DUI count. Attorney was charged by Information with two felony counts of criminal endangerment in violation of § 45-5-207, MCA, and one misdemeanor count of driving under the influence of alcohol or drugs in violation of § 61-8-401, MCA. He allegedly knowingly engaged in conduct that created a substantial risk of death or serious bodily injury to his two minor passengers after consuming alcohol and knowingly driving on public streets, driving in both lanes, swerving, stopping in the road, and driving into a ditch. He pled guilty to the two felony counts of criminal endangerment and one misdemeanor count of DUI *per se*. He received a three-year deferred sentence for both criminal endangerment counts and a 10-day suspended sentence for the DUI *per se* violation with probation conditions. The Montana Supreme Court declined to suspend the attorney from the practice of law on an interim basis pursuant to Rule 23, MRLDE, because the information presented regarding the charges was insufficient to determine if his crimes affected his ability to practice law. Instead, the Court referred the matter to ODC to proceed with a formal complaint. The formal complaint alleged that the criminal act the attorney committed reflected adversely on his fitness as a lawyer to practice law in violation of Rule 8.4(b). The attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. After a Rule 26 hearing, the COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be publicly censured by the Court; be placed on probation for a period of two years subject to the conditions of his deferred and suspended sentences; and, pay the costs of the disciplinary proceedings. *In re Erik Moore*, MT PR 11-0602 (2012).

Conviction of felony theft, receiving stolen property. Attorney pled guilty and was convicted of felony theft and receiving stolen property in Ohio; the value of the stolen property exceeded \$100,000. He had re-paid \$100,000 to the victim. He was sentenced to three years in prison for theft, eight months in prison for receiving stolen property and fined \$1,000. He served 35 days and was released to 24 months of supervision, which was transferred to Montana. The Court found that, pursuant to MRLDE Rule 23, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP recommended the attorney be disbarred and assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendations in their entirety and disbarred him from the practice of law in the State of Montana and ordered him to pay the costs of the disciplinary proceedings. *In re Dal Smiley*, MT PR 10-0108 (2010).

Nolo contendere plea of two felony counts of criminal endangerment. Attorney was charged with and pled *nolo contendere* to two counts of Felony Criminal Endangerment. The District Court imposed a three-year deferred sentence on each count to be served consecutively, subject to certain probation terms and conditions. The Court found that, pursuant to MRLDE Rule 23, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP concluded that the attorney's criminal conduct created a substantial risk of death or serious bodily injury to his victims. COP recommended the attorney to receive a public censure, be suspended for not more than six months, to fully comply with the requirements of his deferred sentence, and be assessed the costs of the proceedings. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendations and ordered the attorney to receive a public censure, to be suspended for not more than six months with credit for the time he has been suspended, to fully comply with the requirements of his deferred sentence, to comply with his agreement entered with the Montana Lawyer Assistance Program, undergo random urinalysis tests, and be assessed the costs of the proceedings. *In re Steven M. Fletcher*, MT PR 10-0167 (2010).

Conviction of Federal Felony Conspiracy to Maintain Drug Involved Premises. Attorney was federally charged with Conspiracy to Maintain Drug Involved Premises in violation of 21 U.S.C. § 846, Maintaining Drug Involved Premises in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2, and Distribution of Cocaine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. He pled guilty to Conspiracy to Maintain Drug Involved Premises. He was sentenced to the Federal Bureau of Prisons for 30 months with three years of supervised release upon his release from imprisonment. The Court found that, pursuant to MRLDE Rule 23, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. During part of the time the attorney was committing the criminal acts, he was a County Attorney. Following a dispositional hearing, COP recommended the attorney be disbarred and assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendations in their entirety and disbarred him from the practice of law in the State of Montana and ordered him to pay the costs of the disciplinary proceedings. *In re Robert L. Eddleman*, MT PR 09-0423 (2010).

Failure to file or timely file and pay or timely pay state and/or federal tax returns. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The formal complaint alleged failure to file or timely file state and/or federal tax returns and failure to pay or timely pay state and/or federal tax obligations for various years spanning over a decade. The formal complaint alleged violations of, among others, Rules 8.4(b) and (d), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 5-year term, and to pay the costs of the disciplinary proceedings. The terms of probation include: 1) obey all laws and Rules of Professional Conduct; 2) file all state and federal tax returns and pay all taxes when due; 3) provide ODC with requested authorizations for access to information from the IRS, Montana Department of Revenue and his accountants, and, 4) provide

ODC with copies of his state and federal income tax returns filed during his probationary period. *In re James P. Molloy*, MT PR 08-0438 (2009).

Misuse of client funds. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Conviction of Felony Wire Fraud. (Reciprocal Discipline) Attorney was disciplined by the Washington Supreme Court, which provided ODC with copies of relevant documents. Attorney violated Rules 8.4(b) and (c) of the Rules of Professional Conduct as well as Rule 8.4(i) of the Washington Rules of Professional Conduct, which, together with other misconduct, resulted in his conviction of Felony Wire Fraud in Federal District Court for the Western District of Washington. Attorney was disbarred from the practice of law in Washington. The Montana Supreme Court ordered the imposition of identical discipline and disbarred the attorney from the practice of law in Montana and payment of costs of the proceedings. *In re Tezak*, MT PR 07-0239 (2007).

Misappropriation of client's funds for personal use. The client hired the attorney to represent him as personal representative of his father's estate. The attorney received \$74,000 from the decedent's pension plan on behalf of the estate. The attorney misappropriated for her own use at least \$52,131.21 of the pension plan money. The client filed an application with the State Bar of Montana's Lawyers Fund for Client Protection. The Lawyers Fund paid the estate \$52,131.21. The Supreme Court of Montana found that the attorney misappropriated \$52,131.21 from the estate for her own use, admitted the criminal act of felony theft of client's funds, and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in the misappropriation of client funds. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.15, 8.4(b), and 8.4(c). The Court ordered the attorney be disbarred and be assessed payment of the costs of the proceeding. *In re Dupuis*, MT PR 06-0006 (2006).

Conviction of Felony Criminal Endangerment. The attorney was convicted of felony criminal endangerment. The Court found that, pursuant to MRLDE Rule 23, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. The attorney was ordered to file an affidavit, pursuant to MRLDE

Rule 32, stating that he'd notified clients, opposing counsel, and judges of his suspension and attesting to his compliance with MRLDE Rule 32. The attorney failed to file this affidavit. Consequently, the Office of Disciplinary Counsel had a trustee appointed to protect the interests of the attorney's clients. Following a dispositional hearing, COP concluded that the attorney's criminal conduct created a substantial risk of death or serious bodily injury to his victim. COP recommended the attorney be disbarred and assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendations in their entirety and disbarred him from the practice of law in the State of Montana and ordered him to pay the costs of the disciplinary proceedings. *In re Lynch*, MT 05-162 (2006).

Conviction Of Improper Use of an Emergency Reporting System, Initiating a False Report, and Disorderly Conduct. (Reciprocal Discipline) The attorney was convicted in Oregon for improper use of an emergency reporting system, initiating a false report, and disorderly conduct. The Montana Supreme Court ordered that the attorney, by reciprocal discipline pursuant to MRLDE Rule 27B, receive discipline identical to that imposed by the Oregon Supreme Court. Consequently, the Montana Supreme Court ordered the attorney be suspended from the practice of law in the State of Montana for one year. *In re Strickland*, MT PR 06-0128 (2006).

Conviction of Federal Felony Wire Fraud and Bankruptcy Fraud. Attorney misappropriated money from his clients and used it for his own personal use and benefit fully knowing that the monies and funds were intended for other purposes related to his representation. Specifically, he wired a client's \$12,500 settlement check, made payable directly to her, to his firm's operating account and used it for his own personal benefit. In a second case, he received a bankruptcy client's \$557 federal tax refund check, fraudulently deposited it into his operating account and used it for his own purposes. The attorney resigned his membership to the Montana State Bar before federal criminal charges were filed against him. He was charged with Wire Fraud in violation of 18 U.S.C. § 1343 and Bankruptcy Fraud in violation of 18 U.S.C. § 153. He pled guilty to both counts and was sentenced to 18 months on each count to run concurrent, three years of supervised release on each count to run concurrent, and payment of restitution. The attorney was disbarred several years prior for his conviction of felony theft of client funds and served time in prison; his law license was reinstated 12 years later. After ODC filed a Petition pursuant to Rule 23, MRLDE, the Montana Supreme Court found the attorney's crimes were ones that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rules 8.4(b) and (c), MRPC, and recommended the attorney be disbarred for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendations in their entirety and disbarred him from the practice of law in the State of Montana. *In re Martin E. Alback*, MT PR 10-0266 (2011).

Nolo contendere plea of Felony Issuing Bad Checks—Common Scheme. Attorney pled *nolo contendere* to the felony charge of Issuing Bad Checks—Common Scheme, in violation of § 45-6-316(3), MCA. She allegedly issued three checks totaling \$8,000 to a credit union, knowing they would not be paid by the depository. The district court adjudged and decreed the attorney guilty of the offense charged and imposed a six-year deferred sentence, subject to certain terms and conditions of probation. A Petition to Revoke was subsequently filed alleging the attorney

violated the terms and conditions of probation. By Judgment of March 9, 2010, the attorney's prior sentence was revoked, and a new six-year deferred sentence was imposed, subject to certain additional terms and conditions of probation. The Montana Supreme Court found that, pursuant to Rule 23, MRLDE, the crime was one that affected her ability to practice law and immediately suspended her pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rules 8.4(b) and (c), MRPC, and recommended the attorney be disbarred and assessed the costs of the proceedings for her violation of her ethical duties. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendation in their entirety and disbarred her from the practice of law in the State of Montana and ordered her to pay the costs of the disciplinary proceedings. *In re Mary Ann Sutton*, MT PR 10-0253 (2011).

Conviction of Assault With a Weapon, Tampering With a Witness, and Making False Reports.

Attorney was convicted by a jury of assault with a weapon in violation of § 45-5-213(1)(a), MCA; tampering with a witness in violation of § 45-7-206, MCA; and making false reports to law enforcement in violation of § 45-7-205(1)(b), MCA. He was sentenced to 14 years in prison for the assault conviction; one year in prison for the tampering conviction; and six months in jail for false reporting. His conviction was affirmed on appeal. The Montana Supreme Court found that, pursuant to Rule 23, MRLDE, the crime was one that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rule 8.4(b), MRPC, and recommended the attorney be disbarred for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation and disbarred him from the practice of law in the State of Montana. *In re Arthur Roy Tadewaldt*, MT PR 09-0212 (2011).

Failure to file or timely file and pay or timely pay state and/or federal tax returns. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The formal complaint alleged failure to file or timely file state and/or federal tax returns and failure to pay or timely pay state and/or federal tax obligations for various years spanning over a decade. The formal complaint alleged violations of, among others, Rules 8.4(b) and (d), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 5-year term, and to pay the costs of the disciplinary proceedings. The terms of probation include: 1) obey all laws and Rules of Professional Conduct; 2) file all state and federal tax returns and pay all taxes when due; 3) provide ODC with requested authorizations for access to information from the IRS, Montana Department of Revenue and his accountants, and, 4) provide ODC with copies of his state and federal income tax returns filed during his probationary period. *In re James P. Molloy*, MT PR 08-0438 (2009).

Convictions of conspiracy to defraud and bank fraud. Attorney was convicted of one count of conspiracy and fourteen counts of bank fraud. The Montana Supreme Court concluded these convictions affected his ability to practice law and ordered him immediately suspended pending the outcome of a disciplinary proceeding. The COP delayed disposition of his disciplinary proceeding during his appeal of the criminal conviction. Following his re-sentencing, the attorney tendered a *Conditional Admission and Affidavit of Consent* pursuant to Rule 26, RLDE.

The Court accepted the admission and ordered the attorney disbarred for a period of no less than five years. *In re Lence*, MT 02-369 (2005).

Colorado conviction for “Drunk with Gun” is a crime affecting ability to practice law, necessitating interim suspension. Attorney was convicted in Arapahoe County, Colorado of being drunk with a gun and sentenced to probation. The Montana Supreme Court determined, pursuant to Rule 23B, MRLDE, that the crime is one that affects an attorney’s ability to practice and suspended him pending the final disposition of a disciplinary proceeding. *In re Andrews*, MT 04-799 (2004).

Felony partner/family member assault is a crime affecting ability to practice law, necessitating interim suspension. Attorney was convicted of two counts of felony partner/family member assault. The Montana Supreme Court determined, pursuant to Rule 23B, MRLDE, that the crime is one that affects an attorney’s ability to practice and suspended him pending the final disposition of a disciplinary proceeding. *In re Robinson*, MT 04-601 (2004).

Criminal contempt conviction is a crime affecting ability to practice law, necessitating interim suspension. Attorney was convicted of misdemeanor contempt of court. The Montana Supreme Court determined the offense is one that affects the lawyer’s ability to practice law, necessitating the suspension of the attorney while a formal disciplinary matter went forward. *In re Drew*, MT 04-417 (2004). Ultimately, the Court accepted the admission, suspended the attorney for six months and publicly censured the attorney

Conviction of conspiracy and bank fraud. Attorney was convicted by federal jury of one count of conspiracy and fourteen counts of bank fraud. The Montana Supreme Court determined that these were criminal offenses that affect the ability to practice law within the meaning of former 16B, RLDE, and suspended the attorney on an interim basis. The attorney subsequently consented to disbarment, pending the outcome of a Rule 33 motion for new trial. *In re Lence*, MT 02-369 (2004).

Conviction for failing to file income tax returns. Attorney entered into a plea agreement with the federal government, in which he admitted failing to file his federal income tax returns for 1992-1996. The attorney argued that he entered the plea agreement only after coercion exercised by the federal government. The Commission on Practice and the Montana Supreme Court determined the attorney’s admissions provided clear and convincing evidence that Rule 8.4(b), MRPC, had been violated. The Court ordered that the attorney be publicly censured for his misconduct. *In re Wallace*, MT 00-582 (2001).

Solicitation to commit interference with parent-child contact is a “serious crime” for purposes of Rule 16, MRLDE. A jury found an attorney guilty of misdemeanor solicitation and the Commission on Practice asked the Montana Supreme Court to determine whether solicitation is a “serious crime” under Rule 16, MRLDE. The Court answered in the affirmative. *In re Christian*, MT 00-176 (2000). The Montana Supreme Court subsequently rejected the attorney’s constitutional challenges to the interim suspension. Ultimately, the Court immediately reinstated the attorney after the criminal conviction was reversed on appeal.

Nolo contendere plea of criminal contempt is a serious crime for purposes of Rule 16, MRLDE. An attorney was convicted on a plea of *nolo contendere* of criminal contempt after knowingly or purposely publishing a false or grossly inaccurate report of a court proceeding by applying the conforming signature stamp of a Justice of the Peace to a “default judgment” and providing copies of the purported judgment to a client to deceive the client into believing she was accomplishing work on his behalf. The Supreme Court suspended the attorney on an interim basis. At the subsequent dispositional hearing, there was no evidence the attorney actually intended to execute the phony judgment. Neither the Commission nor the court examined this case in the context of Rule 8.4 (b), MRPC. However, the Commission’s findings note that the attorney violated a state criminal statute and the Montana Supreme Court determined the crime is a serious one for purposes of Rule 16, MRLDE. The Montana Supreme Court adopted the Commission findings and suspended the attorney indefinitely for a period of more than six months. *In re Smith*, MT 00-023 (2000). In 2001, the Montana Supreme Court granted the attorney’s petition for reinstatement on the Commission’s recommendation.

Willful failure to file income tax return not criminal conduct reflecting adversely on honesty, trustworthiness or fitness as attorney. Attorney self-reported his misdemeanor conviction for failing to file federal income tax returns. The Commission on Practice determined there was insufficient evidence to prove such conduct reflects adversely on the attorney’s honesty, trustworthiness or fitness as a lawyer, or that the conduct involved dishonesty, fraud, deceit or misrepresentation. Accordingly, the Commission did not find violations of Rules 8.4(b) and (c), MRPC. However, the Commission did conclude the attorney’s conduct was prejudicial to the administration of justice and found a violation of Rule 8.4(d), MRPC. The Montana Supreme Court publicly censured the attorney for the misconduct. *In re Paskell*, MT 99-267 (2000).

Conviction of embezzlement, bank fraud, money laundering and conspiracy to commit financial institution crimes defined as “serious crimes” for purposes of Rule 16, MRLDE. The Montana Supreme Court determined an attorney who made a guilty plea to the above crimes, which was accepted by a United States District Court, committed a “serious crime” for purposes of Rule 16, MRLDE, and immediately suspended the attorney on an interim basis. The Court ordered the Commission on Practice to undertake disciplinary proceedings. Ten days after the Court’s order, however, the attorney surrendered his license and completed an “Affidavit of Consent” to disbarment, which was reviewed by the Commission and accepted by the Court. *In re Schreiber*, MT 98-332 (1998).

Conviction of misdemeanor obstruction of justice. A fugitive from Oregon contacted a lawyer to represent him. The lawyer contacted the attorney who was the subject of this disciplinary proceeding, and asked him to accompany the lawyer to the client’s home. The lawyer advised the attorney that there “might be money and illegal drugs located at [the client’s] residence,” according to the Commission findings. Police officers were observing the client’s residence when the two attorneys arrived. The officers observed smoke coming from the chimney of the client’s house. The police investigation revealed marijuana had been burned in the fireplace. When the two lawyers left the home, they removed with them a small suitcase containing a large amount of cash. At the time the attorney entered a guilty plea to the misdemeanor charge of obstruction of justice, he admitted concealing documents and materials related to the sale and possession of marijuana. The Commission noted that “Although the events were initiated by [the

other lawyer, the attorney] had significant criminal culpability in the destruction and removal of evidence, more than adequate to justify his criminal conviction.” The Commission found the attorney had violated Rule 16, MRLDE, but did not address Rule 8.4(b), MRPC, in its analysis. The Montana Supreme Court adopted the findings of the Commission and suspended the attorney from the practice of law for one year. *In re Shaffer*, MT 96-474 (1997).

Theft and disorderly conduct stemming from the taking of a file from another lawyer’s office are grounds for discipline. The attorney entered guilty “Alford” pleas to misdemeanor charges of theft and disorderly conduct after an altercation at another lawyer’s office. The attorney “forcibly removed a file from another attorney’s law office and then involved himself in an altercation with the attorney’s secretary,” according to a Montana Supreme Court order. Despite the attorney’s argument that he was never convicted because his sentence was deferred for six months on the condition he commit no further violations of the law, the Commission on Practice found clear and convincing evidence the attorney was convicted of a serious crime as defined by Rule 16, MRLDE, and that such conviction constitutes a violation of Rule 8.4(b), MRPC. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for violating Rule 8.4(b), MRPC, and other misconduct unrelated to this violation. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney’s petition for reinstatement.)

Conviction for criminal trespass. Attorney pleaded guilty and was convicted of a misdemeanor count of criminal trespass. The attorney was caught in the darkened office of another lawyer, after hours, wearing one rubber surgical glove. When the lawyer returned to his office the following Monday, he discovered a fax machine, a copier and a computer had been unplugged from a surge protector on the floor near where the attorney was found. The attorney claimed he was looking for intruders he suspected were in the lawyer’s office and had pleaded guilty to avoid any newspaper publicity of the event. The Commission on Practice found the attorney’s explanation “neither convincing nor truthful” and concluded the attorney’s conduct violated Rule 8.4(b), MRPC. The Montana Supreme Court found the Commission findings adequately supported by the record and indefinitely suspended the attorney for not less than six months. *In re Bauer*, MT 94-540 (1995). (In 1997, the Montana Supreme Court granted the attorney’s petition for reinstatement.)

Conviction for felony tampering with evidence. Attorney was hired to represent a client being held at a local jail. The attorney enlisted the assistance of another lawyer and went to the client’s house. There, marijuana was destroyed and a large amount of cash was taken from the client’s home. The attorney buried the money in the mountains. Police were observing the client’s home when the attorney conducted these acts. The attorney later turned the cash into the sheriff’s department because he “figured that the jig was up and, secondly, my attorney told me to do it.” The Commission on Practice did not consider whether the conduct violated Rule 8.4(b), MRPC, but did conclude the misconduct constituted a “serious crime” for purposes of Rule 16, MRLDE. The Montana Supreme Court split 4-3 on discipline, with the minority arguing for disbarment as mandatory under § 37-61-309, MCA. The majority suspended the attorney indefinitely, for a period of not less than two years. *In re Harman*, MT 94-266 (1995). (In 1998, the Montana Supreme Court granted the attorney’s petition for reinstatement.)

Theft of property of minimal value. Attorney took two packages of diet gum and a “sports string glass holder with a value of \$6.95” without paying for the items from a drug store in Anaconda. The attorney was arrested and prosecuted for misdemeanor theft, although the charges were ultimately dismissed. The attorney stipulated to the facts and admitted the prosecutor for the Commission on Practice could meet his burden in showing an ethical violation. The Commission found the attorney’s conduct violated Rule 8.4(b) and (c), MRPC. The Montana Supreme Court adopted the findings of the Commission and publicly censured the attorney for his misconduct. *In re McKeon*, MT 92-440 (1993).

8.4(c):

Making false statement to the Supreme Court on petition for reinstatement to active status. Attorney’s law license was transferred to inactive status by the Montana State Bar for non-compliance with CLE requirements. While on inactive status, he filed pleadings in district court on his client’s behalf in a declaratory judgment matter and continued his representation in the matter for more than one year constituting the unauthorized practice of law in violation of Rule 5.5, MRPC. The attorney petitioned the Supreme Court for reinstatement to active status nearly two years later, and the Court granted his petition the following day. In his petition for reinstatement, the attorney advised the Court he had not committed any acts or omissions while not on active status that would be sanctionable under the MRPC. His unauthorized practice of law was a sanctionable offense under the MRPC. His false statement to the Court violated Rules 8.1, 8.4(c), and 8.4(d), MRPC. After ODC filed its Complaint, alleging violations of Rules 5.5, 8.1(b), 8.4(c), and 8.4(d), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 5.5, 8.1, 8.4(c) and 8.4(d), MRPC. *In re Patrick Begley*, MT PR 19-0444 (2020).

Making false statement to the court on application for reinstatement to active status. Attorney had been disciplined in a previous disciplinary matter for violating Rules 1.1, 1.3, 1.4, 8.1(b), 8.4(c), 1.15, and 1.18, MRPC, which resulted his appearance before the Montana Supreme Court for public censure, a two-year probation with certain conditions, and paying costs of the disciplinary proceedings. The attorney appeared for the public censure but failed to comply with any probationary terms and conditions as ordered by the Court in violation of Rule 3.4(c), MRPC. After the Montana State Bar transferred his law license to inactive status for non-compliance with CLE requirements, the attorney applied for reinstatement and falsely stated he had not committed any acts or omissions sanctionable under the MRPC while not on active status in violation of Rules 8.1 and 8.4(c), MRPC. His non-compliance with the Supreme Court’s disciplinary order was a sanctionable violation under the MRPC. After a hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than seven months to run concurrent with his suspension in PR 19-0444 for violating Rules 3.4(c), 8.1, and 8.4(c), MRPC. *In re Patrick Begley*, MT PR 19-0023 (2020).

Making unauthorized charges to client and third-party credit or debit cards and failing to reverse or re-pay; misappropriating client and third-party funds for personal or business use. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting certain facts of the Complaint and multiple violations of the MRPC as outlined. The attorney failed to hold sufficient funds in her IOLTA trust account and misappropriated funds belonging to her client using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She misappropriated \$34,200 from her IOLTA trust account over a two-year period by withdrawing clients' funds prior to earning them and using them for her own purposes in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She began depositing all client retainers into the firm's business account before the funds were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She violated Rule 8.4(c), MRPC, by making multiple unauthorized charges totaling approximately \$19,700 to one client's wife's debit card via payment processors, then transferring them to her operating account or applying them to a loan balance. After she returned approximately \$8,400 of the funds, she still owed \$11,284 to her client's wife, which she refused to return until her client's balance due was paid in full. After another client authorized her to charge her credit card monthly to apply toward her bill, the attorney charged her card multiple times exceeding the agreed upon payment plan by \$6,800, without her client's authorization in violation of Rule 8.4(c), MRPC. The funds were deposited into the firm's IOLTA, and she used for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She did not give her client credit for the excess charges, nor did she reverse the unauthorized charges in violation of Rule 8.4(c), MRPC. The attorney was paid a \$3,500 retainer by a third client's mother-in-law via Square, which she deposited into her IOLTA trust account. Her client then authorized her to charge her credit card monthly to apply toward her bill, but the attorney charged some months in excess of the agreed upon payment plan without authorization and did not reverse all the charges in violation of Rule 8.4(c), MRPC. The funds were deposited into her IOLTA, and the attorney used them for her own purposes before they were earned in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. She then began making unauthorized charges to her client's mother-in-law's credit card totaling \$56,219 over a three-month period in violation of Rule 8.4(c), MRPC. She reversed only \$2,001 in charges and did not have sufficient funds in either her business or trust account to reverse or re-pay the remainder because she used the funds for her own purposes in violation of Rules 1.15 and 8.4(c), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation on Rule 26 Conditional Admission to the Montana Supreme Court wherein it recommended the Court approve the attorney's *Conditional Admission and Affidavit of Consent* and enter an order imposing the agreed upon discipline. The Montana Supreme Court accepted and adopted COP's Recommendation and disbarred the attorney, ordered her to pay \$11,284 in restitution to one third party with 10% interest and \$54,218 to another third party with interest at the rate charged by her credit card company, and to pay costs of the disciplinary proceeding for violating Rules 1.15, 1.18, and 8.4(c), MRPC. *In re Tara Rose-Miller*, MT PR 19-0634 (2020).

Soliciting and eliciting false witness testimony at trial involved dishonesty, fraud, deceit, or misrepresentation. Attorney was hired to pursue a legal malpractice claim against her clients' former attorney for failing to timely pursue their medical malpractice claim after their infant son died. During trial, a defense witness rebutted the attorney's claim that he had consulted with the defendant attorney as an economic loss expert regarding the medical malpractice claims. The

attorney knew her claim was false when she made it at trial and attempted to elicit testimony from her own witness to support her false claim after feeding her witness the false information. The attorney made no attempt to correct the record even after rebuttal witness testimony contradicted her claim. A defense verdict was returned, and the defendant was awarded sanctions against the attorney for the expense of calling the rebuttal witness. The attorney violated Rule 8.4(c), MRPC, by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections and ODC responded. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.4, 1.5(a), 3.3(a), 3.4(b), and 8.4(c), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 19-0017 (2020).

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentations. Attorney, a sole practitioner and owner and operator of a construction company, conducted various business transactions with current or former clients as an attorney and a tax return preparer, advising them to invest in or loan money to his construction business. The attorney received approximately \$1.33 million, \$535,000 of which came from current or former clients. The attorney deposited \$1.2 million of the funds into various personal or business accounts he owned; at least \$125,000 was deposited into his firm's IOLTA trust account. In some cases, he executed promissory notes from him individually or as president of his construction company to current or former clients; in other cases, he executed security or mortgage instruments, which he did not file for recording. The notes called for monthly interest payments or were due in full 30 days after demand and were alleged to be secured by real property. He defaulted on all loans. He used the funds to pay himself, family members, personal or business obligations, or to pay other clients and individuals their interest payments in violation of Rules 1.15, 1.18, and 8.4(c), MRPC. After repaying some of the notes, he still owed \$1,069,970.83 to clients and other individuals. His failure to file security or mortgage instruments for recording violated Rule 8.4, MRPC. After ODC filed its Complaint alleging violations of Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC, for this and other misconduct, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted after the attorney filed objections and ODC responded. The Court disbarred the attorney, ordered him to pay full restitution totaling \$1,069,970.83 plus interest to those harmed, and ordered him to pay costs of the disciplinary proceeding for violating Rules 1.4, 1.8(a), 1.15, 1.18, 8.1(b), and 8.4(c), MRPC. *In re Ronald Lords*, MT PR 19-0034 (2019).

Engaging in conduct involving dishonesty, fraud, deceit, and misrepresentations. Attorney represented a real estate developer and his two LLCs at various times, one of which was formed to act as general contractor for a construction project in Montana. The developer was the sole member of both LLCs. A dispute arose between LLC II, as general contractor, and a subcontractor, resulting in a lawsuit. The arbitration clause in the contract limited damages to actual damages. After arbitration, actual damages were awarded to both the general contractor and the subcontractor, with the general contractor receiving a net award. The general contractor/LLC II subsequently dismissed itself as plaintiff in the lawsuit, and LLC I filed a Second Amended Complaint to include LLC II as a defendant, making the two LLCs' interests

adverse. The attorney then applied and was admitted *pro hac vice* to defend the general contractor in the lawsuit. The general contractor admitted all allegations in the Complaint and failed to assert any affirmative defenses. The attorney colluded with the developer to amend the contract to eliminate the arbitration clause and limitations on damages to benefit LLC I. Because arbitration had already occurred, the amendment was backdated to a time prior to arbitration. They further colluded to have the general contractor stipulate to judgment in favor of LLC I, and LLC I would not execute judgment if the general contractor signed a Confession of Judgment for \$12 million, which they would seek to collect from the insurers. After judgment was entered, the general contractor's insurer successfully sought to intervene and challenge the reasonableness of judgment and whether it was the product of collusion. The district court concluded the judgment was not reasonable but awarded a \$2.4 million judgment against LLC II in favor of LLC I. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, concluding the attorney violated Rule 8.4(c), MRPC, by knowingly assisting his developer client in backdating the contract amendment between the two LLCs, falsifying the document and allowing LLC I to acquire a \$12 million judgment against LLC II, which was not legally recoverable. He further violated Rules 8.4(c) and 8.4(d), MRPC, by failing to disclose the fraudulent nature of the contract amendment after he was aware the document's authenticity was in doubt. After the attorney and ODC filed objections and responded respectively, the Court accepted and adopted COP's Findings of Fact and Conclusions of Law but rejected its recommendation. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.7, 3.1, 3.3, 8.4(c), and 8.4(d), MRPC, and ordered him to pay costs of the disciplinary proceedings. *In re Jon E. Cushman*, MT PR 17-0665 (2019).

Trustee engaged in conduct involving dishonesty, fraud, deceit or misrepresentations.

Attorney, while living and practicing law in Georgia, prepared a Trust on behalf of his client, naming his client's three grandchildren as beneficiaries and naming himself successor Trustee. The attorney witnessed the execution of the Trust and notarized his own signature. After his client died, he was required, as successor Trustee, to distribute \$12,000 per year to each beneficiary; the Trust was valued at nearly \$400,000 at that time. Two years later, the attorney left his law firm and Georgia and eventually re-located to Montana where he was also licensed to practice law. He failed to provide the Trust beneficiaries any future contact information or any information regarding the location or balance of the Trust. After her grandfather died, the beneficiary who was of majority age made several unsuccessful attempts to contact the attorney for three years until she finally located him and requested he pay her college tuition. He informed her he was no longer at his law firm and his life was in upheaval, but he would follow up with her. After he failed to do so, she made multiple unsuccessful attempts to contact him. He finally responded and advised his priority was his family and his wife's ill-health, but he would pay her tuition and for books; he failed to do so. He subsequently advised her he put all Trust assets in stocks and would liquidate them to pay her educational needs; he failed to do so. After he made several unfulfilled promises to pay her tuition and books, she was forced to withdraw from school. When she confronted the attorney about the value of the Trust, he stated he couldn't recall details of how the funds were expended but there was approximately \$200-300,000 remaining. He failed to provide her an accounting or deliver the Trust funds, as requested. The attorney represented on his website that he was a licensed attorney in Wyoming, Georgia and Montana when his Georgia license was administratively suspended, and he was not

licensed in Wyoming. After ODC filed its Complaint, for this and other misconduct, alleging violations of Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), and 8.4(c), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint admitted. For his multiple misrepresentations to the beneficiary, particularly regarding the status of the Trust and Trust funds and making required distributions, and his misrepresentation regarding his license status on his website, the attorney violated Rule 8.4(c), MRPC. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline recommending that based upon the admitted allegations in the Complaint, the attorney be disbarred for his numerous, egregious, prolonged failures and his extreme dishonesty and breaches of duty. The Montana Supreme Court accepted and adopted COP's Findings, Conclusions and Recommendation and, for this and other misconduct, disbarred the attorney for violating Rules 1.1, 1.3, 1.4, 1.15(b), 1.16(a), 7.1(a), 8.1(b), 8.4(c), MRPC. *In re Matthew A. Bryan*, MT PR 19-0024 (2019).

Making false statements and misrepresentations about judge, guardian and conservator. Attorney appeared on her brother's behalf in their mother's guardianship matter. In pleadings, she made baseless allegations of unethical conduct against the joint conservator, the judge, and the guardian and made demeaning and unwarranted attacks regarding their services and integrity. The joint conservator was forced to defend himself against a lawsuit filed by the attorney, which the district court judge found frivolous. She made unsupported allegations of impropriety by the court; made unsupported allegations of criminal misconduct and false, misleading, and uncivil statements against the guardian; made false statements or statements made with reckless disregard as to their truth or falsity regarding the judge's integrity; and she presented no evidence in support of her affirmative defenses. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections. COP concluded the attorney's unsupported allegations and statements violated Rules 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. For this and other misconduct, the Court disbarred the attorney and ordered her to pay \$26,633.75 in costs of the disciplinary proceedings for violating Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Engaging in dishonest conduct by notarizing documents not signed while present and failing to keep notary journal. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint. The attorney admitted to facts as alleged in the Complaint and to violating Rule 8.4(c), MRPC, while employed by a franchise restaurant company, an LLC, as a human resources manager and the company's sole notary public to authenticate signatures of the company's members on legal and banking documents. He admitted notarizing various documents that were not signed in his presence but bore the signatures of the company's members and failing to maintain a notary journal, as required. After a Rule 26 hearing, COP issued its Findings of Fact, Conclusions of Law and Order for Discipline. For acting dishonestly and in violation of his notary certificate, which requires personal presence of signatories to documents, and violating Rule 8.4(c), MRPC, COP ordered the attorney be publicly admonished by the COP in writing and pay the costs of the disciplinary proceedings. *In re Jeffrey D. Mora*, MT PR 17-0244 (2018).

Misrepresentations to the court regarding purpose of filings. Attorney filed a federal lawsuit on behalf of her and her law firm. The federal judge advised her she could not represent her firm because she admittedly was a witness, and she subsequently obtained new counsel. The defendants filed a Motion for Protective Order, and the attorney prepared her own response brief for her counsel to file. He disagreed with her position because it was not meritorious and refused to file it. The attorney advised the judge she did not object to counsel's withdrawal because he was incompetent and refused to file the brief that she had ready to file. That same day, the attorney logged into her e-filing account and filed a Notice to Court and an Affidavit with a proposed response brief attached, listing her counsel as Plaintiffs' attorney and indicating he was the attorney executing the documents. In her Affidavit, the attorney stated she filed it for the limited purposes of addressing her counsel's untimely withdrawal and unethical actions by refusing to file her response brief. Counsel later testified he did not sign the proposed brief and refused to file it. New counsel appeared on Plaintiffs' behalf, and a hearing was held the next day. The attorney admitted her previous counsel did not sign the proposed brief and she failed to advise the court of the same. The judge found she filed the brief for the purpose of presenting her arguments to the Court. The attorney's false misrepresentations to the court as to why she attached the response brief to her affidavit violated Rules 3.3(a) and 8.4(c), MRPC. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Order of Discipline and, for this and other misconduct, ordered the attorney be publicly admonished by COP and pay costs of the disciplinary proceeding for violating Rules 3.3(a), 3.4(c), and 8.4(c), MRPC. The attorney filed objections with the Montana Supreme Court, which affirmed COP's decision. *In re Tina L. Morin*, MT PR 17-0254 (2018).

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly converting funds belonging to 3rd party. (Reciprocal Discipline) Attorney represented a bank in 74 real estate foreclosure actions filed in Idaho and Montana and retained a title company to provide title services in connection with the foreclosure cases. For its title services, the title company charged the attorney's firm over \$57,000. The firm, in turn, billed the bank. When the bank paid the costs in full, the attorney deposited the funds into the firm's operating account. Rather than forward the funds to the title company, the attorney used the funds to pay operating expenses. The title company filed a lawsuit in Montana against the firm and obtained a judgment for nearly \$56,000; the title company was only able to collect \$1,179.20 from the firm. The Hearing Board disbarred the attorney for violating RPC 1.15A(b) for failing to promptly deliver funds owed to the client or third person, and 8.4(c) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and ordered him to pay restitution to the title company. Colorado's RPC 1.15A(b), and 8.4(c), are similar or equivalent to Montana's Rules 1.15(b), and 8.4(c), MRPC. Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed identical discipline and disbarred the attorney from the practice of law in Montana. *In re Philip Kleinsmith*, MT PR 17-0663 (2018).

Making false statements knowingly or recklessly regarding incumbent judicial candidate opponent during election campaign. The attorney sent a mailer to county residents and placed advertisements against his incumbent opponent during his campaign for election to a district court judge position, all of which included knowingly false and reckless statements—including unsubstantiated claims that his opponent had presided as the judge in a case against the ex-boyfriend of the opponent's "cocaine and sex partner" and that his opponent had purchased

illegal drugs from a 13-year-old child—that had a substantial likelihood of prejudicing pending legal proceedings. The attorney argued his statements were free speech protected by the First Amendment. After a formal hearing, COP concluded the attorney violated Rules 8.1(a) and 8.4(c), MRPC, by making or causing to be made statements he knew to be false or made with reckless disregard for the truth concerning the integrity of a judge, and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. COP submitted Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court disbarred the attorney, consecutive with discipline imposed in PR 16-0245 and PR 16-0411, and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC. The Court further stated that the knowingly-made false statements and false statement made with reckless disregard of the truth do not enjoy constitutional protection. *In re Robert C. Myers*, MT PR 17-0026 (2017).

Making false statements knowingly or recklessly regarding incumbent judicial candidate opponent during election campaign. The attorney placed an advertisement during his campaign for election to a district court judge position in which he had a former client make representations about the attorney’s opponent and his integrity that he knew to be false or made with reckless disregard for the truth. The attorney also provided a written statement to the local newspaper that included knowingly false and reckless statements about his opponent. The attorney argued his statements were free speech protected by the First Amendment. After a formal hearing, COP concluded the attorney violated Rules 8.1(a) and 8.4(c), MRPC, by making or causing to be made statements he knew to be false or made with reckless disregard for the truth concerning the integrity of a judge, and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. COP submitted Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted and adopted. For his misconduct, the Court indefinitely suspended the attorney for three years, consecutive with discipline imposed in PR 16-0245 and PR 17-0026, and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(a), 8.2(b), and 8.4(c), MRPC. The Court further stated that the knowingly-made false statements and false statement made with reckless disregard of the truth do not enjoy constitutional protection. *In re Robert C. Myers*, MT PR 16-0411 (2017).

Mishandling and misappropriating client funds; failure to promptly deliver client funds; taking fees before earned; failure to hold clients’ property separate from attorney’s property; failure to properly maintain IOLTA trust account. Attorney disbursed all or part of his attorney fees and out-of-pocket expenses incurred in certain cases from his IOLTA trust account to himself or others prior to receipt of the anticipated settlement funds, totaling approximately \$89,000. To cover these disbursements, he used funds belonging to others or his own earned fees from settled cases that he had not previously timely disbursed. He also improperly transferred nearly \$180,000 to which he was not entitled from his IOLTA to his operating account. He eventually restored nearly \$157,000 of the improperly transferred funds by leaving over \$115,000 of his own funds in the trust account and transferring \$41,250 from his operating account. He used funds in the trust account belonging to others to cover the remainder. He failed to pay several clients all funds owed to them, totaling approximately \$4,800. He left approximately \$8,300 in the IOLTA, which he used for his own purposes without a proper

accounting. He failed to maintain his IOLTA account in accordance with the Trust Account Maintenance and Audit Requirements. He failed to hold unearned retainer funds in his IOLTA until earned. The attorney admitted all material facts alleged in the Complaint, his misconduct, and his violations of the MRPC. All clients eventually received funds owed to them. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, concluding the attorney's use of funds belonging to his clients and/or others constitutes misappropriation and mishandling of funds in violation of Rules 1.15, 1.18 and 8.4(c), MRPC. His transfer of approximately \$180,000 not belonging to him from his IOLTA to his operating account constitutes misappropriation and mishandling of funds in violation of Rules 1.15, 1.18 and 8.4(c), MRPC. The Court accepted and adopted COP's Findings, Conclusions and Recommendation and indefinitely suspended the attorney for not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings, including the \$30,000 to ODC for violating Rules 1.15, 1.18, and 8.4(c), MRPC. If reinstated, he must provide CPA-reviewed accounting of his trust account for 10 years. *In re Lucas Foust*, MT PR 16-0301 (2017).

Making misrepresentations to the Court and failing to correct error. Out-of-state attorney, licensed in Montana, was hired as co-counsel to appear on a limited basis for bankruptcy clients in adversary proceedings filed in U.S. District Court. Co-counsel, who requested the attorney appear and file a brief in U.S. District Court on his client's behalf, was admitted in U.S. Bankruptcy Court for the District of Montana but not in U.S. District Court for the District of Montana. The attorney filed an opposition brief in U.S. District Court with his and co-counsel's names in the heading, even though co-counsel did not yet have *pro hac vice* status. The AUSA wrote co-counsel, noting he had not taken appropriate steps to be admitted *pro hac vice*, and copied the attorney. The attorney attempted to contact co-counsel the same day but was unable to communicate with him until the following week when co-counsel confirmed he was not admitted in U.S. District Court. After the federal judge discovered the error, he *sua sponte* struck the attorney's brief and issued a Show Cause Order directing the attorney to appear and explain. At the hearing, the attorney admitted he did nothing to correct the record after he learned of the mistake. In his written response, he acknowledged his mistake, indicated it was not done with intent to mislead, and apologized to the Court. The attorney violated Rule 8.4(c) by including his co-counsel's name on the pleadings, representing to the Court he was admitted *pro hac vice*, and failing to notify the Court when he learned co-counsel was not admitted *pro hac vice*. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted with the exception of the recommendation he be placed on probation. For his misconduct, the Court ordered the attorney be publicly censured by the Court in writing, write a letter of apology to the federal judge, and pay costs of the disciplinary proceedings for violating Rules 1.3 and 8.4(c), MRPC. *In re Timothy Warzecha*, MT PR 16-0026 (2017).

Engaging in conduct involving dishonesty, deceit, fraud, or misrepresentations. Attorney represented the Montana Public Employees Association (MPEA) for several years. He advised the City of Whitefish that MPEA was going to pursue an appeal through the grievance process on behalf of a collective bargaining unit member. When MPEA's executive director inquired about the status, the attorney repeatedly made false representations and assurances the matter was progressing, that he would file a lawsuit compelling the City to participate in the grievance

process, and that he was defending MPEA in court and would prevail. When MPEA confronted him, the attorney admitted his dishonesty. MPEA fired the attorney after determining he had abandoned any defense and had repeatedly deceived MPEA and the grievant. The attorney violated Rule 8.4(c), MRPC, by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentations. He failed to file an Answer to the Complaint ODC filed, deeming all allegations admitted. COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for a period of not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.2, 3.4(d), 8.1(b), and 8.4(c), MRPC. *In re Carter Picotte*, MT PR 16-0446 (2017).

Misrepresentations to client and third parties. Attorney represented the Montana Public Employees Association (MPEA) for several years. In handling a grievance filed against the City of Bozeman, he misrepresented the facts, the delay, cause for delay, and his actions to both his client, MPEA, and the grievant. At the formal disciplinary hearing, the attorney admitted he was dishonest with MPEA and the grievant and misrepresented the facts in violation of Rules 4.1 and 8.4, MRPC. After the hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for a period of not less than seven (7) months and ordered him to pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 4.1, and 8.4, MRPC. *In re Carter Picotte*, MT PR 16-0319 (2017).

Making false statement and misrepresentations to disciplinary authority with intent to deceive. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC, in relation to two separate matters. In relation to one matter, he admitted violating Rules 8.1(a) and 8.4(c), MRPC, by falsely stating he refunded a client's retainer fee and providing a purported cover letter to his client transmitting the check. The letter was never sent to the client, and the attorney did not return the client funds until after ODC questioned him. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court ordered the attorney be publicly censured by the Court, be placed on probation for two years, subject to the terms and conditions, and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.15, 1.18, 8.1 and 8.4(c), MRPC. *In re Patrick G. Begley*, MT PR 16-0237 (2017).

Advancing non-meritorious claims; testifying falsely; failing to comply with court orders. Attorney filed a lawsuit against an electric company seeking damages for property loss after the electric company terminated services to a townhouse. Despite his assertion, he did not own the townhouse. He claimed \$100,000 in damages to the townhouse and \$40,000 to his personal property. In deposition testimony, the attorney admitted he held no interest in the townhouse and agreed to amend his pleading. His amendment changed his assertion of "owned and occupied" to "occupied and paid for" the townhouse. During discovery, he provided inaccurate and untruthful information regarding his alleged damages, identity of damaged property, and his ownership in the townhouse. During litigation, the district court found the attorney in contempt

for failure to comply with a sanctions order. After investigation, the electric company filed a second motion for sanctions based upon the attorney's false damages claims. The district court determined he overstated the amount of damages by at least \$18,700 in an attempt to obtain a larger settlement or damages award and dismissed his claims as an appropriate sanction. The attorney appealed, misrepresenting in his notice that no hearings were ever held, thus no transcripts were available. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. The Court ordered the attorney be suspended from the practice of law for 60 days and ordered to pay costs of the disciplinary proceedings for violating Rules 3.1(a), 3.4(b) and (c), 8.4(c) and (d), MRPC. *In re Larry G. Schuster*, MT PR 15-0264 (2016).

Knowingly asserting false statements of fact and offering evidence known to be false; dishonesty, deceit, fraud or misrepresentations. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board found the attorney made numerous false statements of fact to the court during the lawsuit and further offered evidence to the Board he knew to be false; knowingly disobeyed his obligation under the rules of a tribunal by failing to prepare and approve orders of the court as directed; made frivolous discovery requests and failed to make reasonably diligent efforts to comply with the former clients' legally proper discovery requests; used means that had no other purpose than embarrassing, delaying, or burdening the former clients; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation during the lawsuit; and engaged in conduct that is prejudicial to the administration of justice. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court suspended the attorney from practicing law in Montana for a period of nine months for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

Engaging in conduct involving dishonesty, fraud, deceit or misrepresentations. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. The attorney made misrepresentations to his client, mishandled his client's cost funds by applying them to his attorney's fees, deliberately failed to finish his client's matter, failed to properly and adequately communicate and address or correct billing issues with his client, consciously chose not to correct the amended judgment for his client unless and until all his fees were paid, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client's permission, failed to address issues related to his failure to retain services of a court reporter for trial, and failed to submit a corrected amended judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana's Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). Pursuant to Rule 27, MRLDE, the Montana Supreme Court imposed identical discipline and suspended the

attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Failure to timely file post-conviction petition; failure to communicate; failure to protect client interests; improper termination of representation; misrepresentations to client. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client. He failed to respond to his client's requests for status updates, failed to notify him that he did not intend to pursue his post-conviction relief petition, and misrepresented to his client's brother that he had prepared and filed the petition and would provide proof thereof. The attorney terminated his representation after the filing deadline had passed without consent or notice to his client. He failed to protect his client's interests, failed to advise him of the applicable deadlines and failed to timely return unearned fees. The attorney engaged in conduct involving dishonesty, deceit, fraud or misrepresentations in violation of Rule 8.4(c), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Misappropriation and theft of client or third party funds; failing to notify and/or deliver client funds; settling client matters without authority; forging client or third party signatures on settlement documents and/or checks; falsifying bank account and financial reporting documents; engaging in fraud, deceit, misrepresentations and dishonesty. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney failed to promptly deliver settlement funds belonging to his clients or others and failed to keep those funds separate from his own after fraudulently acquiring the funds when he settled the client matters without their knowledge or consent. He further failed to inform his clients or third parties to whom the funds belonged of the settlement, lied to some about receiving the funds, forged signatures, and stole and misappropriated their funds for his own purposes. He likewise stole and misappropriated funds from other clients received through probate proceedings or real estate or business transactions and lied to the clients or third parties about the amount of funds owed to them. In a probate matter, the attorney lied to third parties regarding the status and circumstances surrounding the probate and the Estate's assets. When acting as secretary/treasurer of ABOTA, he stole funds from the Montana Chapter and falsified bank account and financial reporting documents. By this conduct, the attorney violated Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional

Admission and Affidavit of Consent to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Making misrepresentations to Detention Officers as an alleged victim in a pending domestic dispute case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 8.4(c) and 8.4(d), MRPC, by misrepresenting to the Cascade County Detention Center that he was there to see his client. The purported client was his girlfriend, charged with Partner Family Member Assault for assaulting the attorney in a domestic dispute. He failed to disclose to the Detention Officer he was the alleged victim and potential witness with the intent to deceive the detention officers and meet and discuss the case with his girlfriend without being recorded or monitored. At the time of the attorney's misconduct, he was serving his 2-year probation term in a prior disciplinary matter. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be suspended for 45 days and pay costs of the disciplinary proceedings for violating Rules 8.4(c) and 8.4(d), MRPC. *In re Jeffrey Sutton*, MT PR 15-0031 (2015).

Making misrepresentations regarding estate value. (Reciprocal Discipline) Attorney was disbarred by the Washington Supreme Court for violating Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d) of the Washington Rules of Professional Conduct by his misconduct arising out of litigation involving the probate of his mother's estate wherein he was the personal representative. Even after he was removed as personal representative, he continued to file several frivolous appeals and subsequent litigation resulting in four contempt findings and sanctions against him totaling \$138,000. He knowingly and with dishonest intent violated the rules, causing actual injury to other heirs and the administration of justice. Pursuant to Rule 27A, MRLDE, the Montana Supreme Court imposed reciprocal discipline and disbarred the attorney from practicing law in Montana for violating Montana's equivalent Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d). *In re Russell K. Jones*, MT PR 15-0073 (2015).

Misappropriating and mishandling funds; co-mingling client co-mingling client and/or third party funds; failure to hold client and/or third party property (funds) separate from his own; failure to promptly deliver client and/or third party funds; failure to provide accounting of funds; making misrepresentations to the Court and third parties; misstating the law to third parties. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. The insurer wired the funds to the attorney's IOLTA trust account in October 2008. He did not immediately distribute settlement funds to the heirs or to himself for his fees. Between October 2008 and March 2010, the attorney paid himself \$183,100 but was only entitled to \$120,000 in attorney fees. During that time, he disbursed approximately \$51,000 to his client or others on her behalf, \$32,000 to his client's non-attorney advocate, and \$32,524 to others for litigation expenses. By the end of June 2010, the attorney's trust account balance was \$10.47. No funds were disbursed to the other heirs. The attorney thereafter paid himself and his client, or others

on her behalf, additional funds in the IOLTA trust account using funds belonging to others. At a hearing in the state probate case in February 2013, the attorney misrepresented to the Court he was holding the settlement proceeds totaling \$110,000 in a separate trust account. He did not comply with the Court's order to submit an accounting of all settlement funds. In January 2014, the attorney misrepresented to the personal representative he was holding \$60,000.00 in his IOLTA trust account to be disbursed and misstated the law when he advised her she and the other heirs were only entitled to \$17,000 of the settlement funds. He failed to promptly deliver funds to the heirs, failed to hold property belonging to his client and/or others separate from his own, used funds belonging to himself or others to cover the monies paid to his client, and misappropriated and mishandled a substantial portion of the settlement proceeds in violation of Rules 1.15, 1.18 and 8.4(c), MRPC. In violation of Rules 3.3 and 8.4(c), MRPC, the attorney made false statements to the Court and the personal representative and misstated the law to the personal representative. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC, for this and other misconduct. After the parties filed objections, the Supreme Court accepted and adopted the COP's Findings, Conclusions and Recommendations, with the exception of disgorgement of fees and the amount of restitution, and, for this and other misconduct, disbarred the attorney, ordered him to pay restitution totaling \$65,547.10, and pay costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Failure to file lawsuit or pursue litigation; failure to keep client informed; misrepresenting case status to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC. Specifically, he admitted he was retained to assist a client with the dissolution of her joint investment of real property with her former boyfriend. She invested approximately \$14,000 in the property and was seeking her portion of the equity. The attorney sent a demand letter with a draft Complaint and Demand for Jury Trial that would be filed in 10 days if no resolution was reached. Negotiations were unsuccessful, and the attorney advised his client he would file the Complaint. Four months later, he emailed his client advising her the Complaint had been filed and would be served that week. Nearly three years later, he admitted to her that the Complaint had not been filed and subsequently sent her a full refund, plus 10% interest, totaling \$1,612.50. He was unable to locate her physical file. He neglected to provide her with reasonable communications and failed to advise her about the status of the Complaint or his failure to institute litigation. He misrepresented to her that he had filed the Complaint. No discovery or further case preparation had occurred. Following a Rule 26 hearing, COP issued its Order of Discipline, which included its Findings of Fact and Conclusions of Law. For violating Rules 1.1, 1.3, 1.4, 3.2, and 8.4(c), MRPC, COP ordered the attorney be publicly admonished by the COP, be placed on probation for two years, subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Scott Hilderman*, MT PR 13-0713 (2014).

Improperly advancing money to clients; acquiring proprietary interest in clients' lawsuit; failing to obtain clients' written, informed consent to business transactions; failing to advise clients about desirability of seeking independent counsel to the transactions; knowingly making false representations in a disciplinary matter; engaging in conduct involving deceit

and misrepresentations. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC. Specifically, he admitted advancing \$1,000 to clients who retained him to represent them regarding their personal injury claims resulting from a motor vehicle accident. Shortly after he was hired, the clients retained new counsel, who filed a Complaint and Demand for Jury Trial on the clients' behalf. Five days later, the attorney faxed a letter to the newly retained counsel, advising that the clients had re-hired him to represent them and their newborn baby regarding their personal injury claims. During that same month, the attorney advanced his clients \$3,150. At the attorney's suggestion, the clients also retained another law firm, with whom the attorney entered into a 30/70 fee sharing agreement. The attorney made advances to the clients totaling \$13,122.31. For nine advances totaling \$5,350, the client signed an Assignment of Judgment Proceeds, which gave the attorney a proprietary interest in the case. He also charged the client administrative fees totaling \$1,000. He failed to advise his clients, in writing, of the desirability to seek independent counsel regarding the advances and failed to obtain their written, informed consent to the terms of the transactions and his role therein, including whether he represented the client in the transactions. Upon inquiry, the attorney falsely represented to ODC that he had never advanced money to other clients, former or current, except for litigation expenses. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For violating Rules 1.8(a), (e) and (i), 8.1, and 8.4(c), MRPC, the Supreme Court ordered the attorney be publicly censured, be placed on probation for 10 years subject to specific terms and conditions, and pay the costs of the disciplinary proceedings. *In re Gregory L. Ingraham*, MT PR 13-0293 (2014).

Failure to inform the court of material facts in ex parte adoption; failure to notify legal parent of adoption proceedings; misrepresenting facts to adoption court; failure to acknowledge parental rights; failure to correct error in adoption proceedings. Attorney represented the mother in post-dissolution custody proceedings and in adoption proceedings. The custody proceedings and the adoption proceedings were assigned to separate judges. The ex-husband, although not the biological father of one child, had joint custody of both children subject to the existing parenting plan. His non-biological child was born during the marriage, he was listed as the father on the child's birth certificate, and he raised the child as his own. While the parenting plan was being re-litigated, the attorney prepared a petition for the mother's new husband to adopt the ex-husband's non-biological child. The mother's motive and intent of the adoption was to frustrate the ex-husband's established parental rights. The attorney did not attach the existing, stipulated parenting plan to the adoption petition, as required by statute, and did not advise the adoption court that the ex-husband had parenting rights of the child. The attorney failed to notify the ex-husband, who maintained joint custody of the child, of the adoption petition, denying him the opportunity to object to the adoption. The petition stated there were no other persons – other than the consenting, biological father and the petitioner – who had an interest in the proceedings and the adoption relieved all other persons of parental duties. After an *ex parte* hearing, the adoption petition was granted. The attorney instructed his client to continue to follow the existing parenting plan, but the mother alienated the ex-husband from the child's life. The ex-husband did not learn of the completed adoption until three years later. He eventually filed a motion to set aside the adoption. Parenting disputes continued, and a trial was held in the dissolution proceedings. The district court determined the mother proceeded with the

adoption without notice to her ex-husband in an effort to deprive him of his parental rights. The attorney did not take measures to correct the adoption decree to reflect the approved parenting plan. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 3.3(d), 8.4(c) and (d), MRPC, and recommended he be suspended from the practice of law for a period of three months and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Roy W. Johnson*, MT PR 13-0079 (2014).

Misappropriation and co-mingling client funds; failure to promptly notify and deliver funds to client and health care providers; failure to keep proper trust account records/client ledgers; failure to keep clients reasonably informed; failure to provide clients an accounting; failure to ensure employees' conduct complies with lawyer's ethical obligations. Attorney represented two personal injury clients in separate, unrelated lawsuits to pursue all claims for damages resulting from motor vehicle accidents. In one client's matter, the attorney made a *Ridley* demand to the defendant's liability insurance carrier and requested they issue one check made payable to his firm. The insurer paid four medical providers directly and sent the remaining balance of \$30,310.13 to the firm. Upon receipt, the check was deposited into the IOLTA trust account. That same day, at the attorney's direction, his legal assistant issued a check for \$30,310.13 made payable to the firm, noted as attorney fees, and deposited it into the operating account. Nearly eight months later, the attorney began issuing trust account checks to pay his client's medical expenses using funds belonging to him or others. He subsequently deleted his client trust account ledger. The amount he eventually paid the medical providers exceeded the amount he received from the insurer to pay those expenses. He did not inform his client that he received the money, or that he immediately took the money claiming it as fees, or that he failed to timely pay the health care providers. He failed to give his client a settlement statement or an accounting of the funds received. In the second client's matter, the client's insurance carrier issued two checks for payment of the client's medical expenses, totaling \$4,495.52, made payable to the firm. The checks were deposited into the attorney's trust account but no funds were disbursed. Several months later, the attorney informed his client he was leaving the practice of law and she should pick up her file. Over one year later, after receiving the disciplinary complaint, the attorney issued a trust account check to himself for his fees and issued another to his former client for her share of the \$4,495.52. At the time he received the funds, the attorney failed to inform his client and failed to disburse her share to her. His client ledger did not reflect receipt of the funds. He failed to provide his client with a settlement statement or an accurate accounting of the funds he received. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 1.4, 1.5(c), 1.15, 1.18, 5.3, and 8.4(c), MRPC, and recommended the attorney be disbarred and pay costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Solomon Neuhardt*, MT PR 13-0712 (2014).

Conflict of interest of current and former clients; false statements to disciplinary authority; dishonesty, fraud, deceit and misrepresentations. Attorney represented both a husband and wife during a federal investigation of methamphetamine distribution. The wife was a confidential witness in the investigation. The attorney represented her at an interview, during

which she gave law enforcement incriminating information against her husband. Later the same evening, the attorney represented the husband at an interview by law enforcement. Law enforcement used the incriminating information provided by the wife in the interview. One year later, the wife was interviewed by law enforcement a second time during which she again gave information that incriminated her husband. The attorney represented her at that interview. When the interview concluded, the attorney advised law enforcement he was no longer representing the husband. He did not invoke the spousal immunity privilege during the interviews, nor did he obtain an informed consent waiver of actual or potential conflict of interest from either client. The following day, the attorney filed a petition for dissolution of marriage on the wife's behalf before he had terminated his representation of the husband. The husband was subsequently federally indicted on several charges of drug trafficking, firearms possession and stolen firearms possession. He pled guilty to one count of possession with intent to distribute and was sentenced to 20 years in federal prison with six years of supervised release. In his response to a disciplinary inquiry, the attorney denied having represented the wife in her dissolution proceeding. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court. The Court found the attorney violated Rules 1.7, 1.9, 8.1(a) and 8.4(c), MRPC, and ordered he be suspended from the practice of law for 90 days, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Solomon Neuhardt*, MT PR 13-0070 (2014).

Failure to promptly file immigration petition; lack of communication; withdrawing funds from trust account before earned or expended; dishonesty, fraud, deceit or misrepresentations.

Attorney was retained to prepare and file a marriage-based immigration petition with the U.S. Citizenship and Immigration Services of the Department of Homeland Security. She deposited the \$2,000 retainer plus an additional \$900 into her trust account. For over a year, the attorney continually misrepresented to her clients that she had filed the petition and paid the \$420 required filing fee. She sent the clients an invoice indicating the filing fee had been paid and their retainer balance was less than \$65. She had withdrawn nearly all of the funds from her trust account. One year after being retained, the attorney told her clients the filing fee had not cleared her account so she would just re-file the petition. She again misrepresented to her clients that she had filed the petition. Three months later, she informed them she could no longer represent them and sent the petition and filing fee to the Department of Homeland Security the following day. Throughout the representation, she failed to keep her clients reasonably informed about the status of their case and/or failed to promptly comply with their requests for information. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.3, 1.4, 1.15, 1.18, 8.4(c), MRPC. The COP recommended the attorney be publicly admonished by the COP, and be assessed the costs of the disciplinary proceedings. The Court accepted the COP's decision as final. *In re Deborah S. Smith*, MT PR 13-0296 (2014).

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary

proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Engaging in an unfair and unreasonable business transaction with a client; failure to obtain client's written, informed consent regarding the terms of a business transaction; and engaging in fraud, dishonesty, deceit, and misrepresentations. Attorney was hired to represent one of the co-personal representatives of an estate. The heirs were attempting to sell the real property belonging to the estate. An initial market analysis of the estate property suggested the sale price be \$125,000, but the attorney's client refused to sign the listing agreement. The attorney wrote opposing counsel suggesting they hire an appraiser, and he would provide a copy of the appraisal to opposing counsel. The attorney received the written appraisal report, which estimated the property's market value at \$234,000. The attorney provided a copy to his client and offered to purchase the property for \$125,000, which he said would generate a net profit to her that was comparable to a \$200,000 sale because he would waive his fees. The client signed the written offer as co-PR but did not sign a consent and conflict waiver. The attorney delivered his \$125,000 purchase offer to opposing counsel for consideration and advised that he did have a conflict waiver from his client. The other co-PR rejected the offer, and the attorney increased it to \$140,000, which again was rejected. The attorney then informed opposing counsel of the \$234,000 appraisal and provided the market value analysis, which indicated the property value was in the \$249,000-\$263,000 range. The estate property was subsequently sold to a third party for \$192,000. The ODC filed a formal complaint alleging the attorney had a significant risk that his representation of his client, as co-PR, would be materially limited by his personal interests; he failed to exercise independent professional judgment and render candid advice; he failed to fully disclose the transaction and terms of the executory contracts and transmit them in writing to his client in a manner that could be reasonably understood by her; he failed to advise his client in writing of the desirability of seeking independent legal counsel regarding the transaction; he failed to obtain his client's informed consent, in writing, to the essential terms of the transaction and the lawyer's role in the transaction; and his failure to disclose the second appraisal to opposing counsel while making purchase offers was deceitful. After a formal hearing, the COP

submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rules 1.7, 1.8(a), 2.1, and 8.4(c), MRPC. The COP recommended the attorney be publicly censured by the Court, and be assessed the costs of the proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Brad L. Arndorfer*, MT PR 11-0649 (2012).

False Representations to District Court Resulting in Financial Benefit to Attorney. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The complaint alleged the attorney failed to act with reasonable diligence in representing his client, who was the personal representative in a probate matter; failed to promptly reply to her reasonable requests for information and/or failed to keep her reasonably informed about the status of the matter; failed to withdraw as counsel of record after he was discharged from representing her and failed to provide her with her file, as requested, and/or failed to take steps to the extent reasonably practical to protect her interests; failed to inform the district court that he had been discharged from representation; falsely represented to the district court that his client was deceased without taking adequate measures to contact her or determine whether she was, in fact, deceased before making such representation; failed to notify the court after learning that his former client was still alive; and took a fee that his client did not agree to. The attorney did have her most recent contact information in the file. As a result of his misrepresentation, the court consequently appointed him as successor personal representative of the estate. As the successor personal representative, the attorney signed a Deed of Conveyance, transferring the mineral rights of the estate to himself as a fee for his services without his client's knowledge or consent. The formal complaint alleged violations of Rules 1.1, 1.3, 1.4, 1.5, 1.16, 3.1, 3.3, and 8.4(c), MRPC. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court adopted. The Supreme Court ordered the attorney be suspended from the practice of law for a two-month period, be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re James W. Spangelo*, MT PR 10-0038 (2011).

Failure to act; failure to consult with client and obtain informed consent regarding decision; failure to communicate; lack of diligence; failure to expedite litigation; failure to comply with requirements regarding terminating representation; failure to comply with discovery requests; dishonesty, deceit, misrepresentations and fraud; conduct prejudicial to administration of justice. Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and

awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to file a response brief as ordered by the Court, misrepresentations to client, failure to respond to disciplinary inquiries. Attorney was retained to defend a client in a lawsuit filed against her by her former landlord for damages to a rental property. At trial, the Court directed counsel to file briefs regarding the lease at issue. The attorney failed to file a brief or to respond to the Plaintiff's brief. The Court awarded the Plaintiff damages and attorney fees for over \$13,500 with interest. After the Judgment was entered, the client requested a copy of the brief the attorney filed on her behalf. He faxed the client a Brief in Opposition to Term Lease that included a Certificate of Service, indicating it had been mailed to opposing counsel. The brief was not filed with the Court nor did opposing counsel receive a copy. In this matter and in a separate matter, the attorney failed to respond to the informal complaint filed against him with the ODC, despite ODC's requests for response. The ODC filed a formal complaint against the attorney; the attorney failed to file an Answer. A default hearing was held before the COP, and the attorney appeared. After the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court wherein it concluded that the attorney violated Rules 1.1, 1.3, 3.4(c), 8.4(c) and 8.1(b), MRPC. The Montana Supreme Court adopted the COP's Findings, Conclusions and Recommendations in full and suspended the attorney from the practice of law in Montana for a period of 90 days and ordered him to pay the costs of the disciplinary proceedings. *In re Marvin E. Alback*, MT PR 09-0222 (2009).

Misuse of client funds. Attorney was hired by several clients to file a wrongful discharge lawsuit. Attorney failed to respond to discovery on behalf of his clients, resulting in a motion to compel wherein the Court directed plaintiffs to respond to discovery by a certain date. Rather than responding to discovery, attorney subsequently filed a motion to withdraw, which was granted. The case was dismissed and a \$10,000 judgment was entered against the attorney's clients. The Montana Supreme Court found the attorney's conduct violated Rules 1.1, 1.3, 1.4 and 1.16, MRPC. In another matter, the attorney was hired by a California auto financing company to collect deficiency judgments. The attorney began collecting a \$13,463 debt from

two debtors, who over a period of years paid \$9,350 through the attorney's office. After the financing company made inquiry to the attorney, he paid them \$1,950 and failed to provide the remaining \$7,400 or account for the same. The Montana Supreme Court found the attorney's conduct violated Rules 1.4, 1.15 and 8.4(b) and (c), MRPC. The Court also found that the attorney violated Rule 8.1(b), MRPC for failing to respond to ODC's inquiries. The Court ordered the attorney be disbarred from the practice of law and be assessed with the costs of the disciplinary proceedings. Any petition for reinstatement is conditioned on the reimbursement of \$7,400 to the financing company. *In re Bacheller*, MT PR 06-0461 (2007).

Practicing law while suspended; failure to inform court and opposing counsel of suspension; failure/refusal to comply with court suspension order. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the COP concluded that the attorney violated Rule 5.5, MRPC, because he practiced law while suspended from the practice of law pursuant to an earlier order of the Court; he violated Rules 3.3(a)(2) and 8.4(c), MRPC, by failing to inform an Indiana U.S. Magistrate Judge and Indiana counsel of his suspension from the practice of law by the Montana Supreme Court and for acting deceitfully; and he violated Rule 8.4(d), MRPC, because he failed or refused to comply with or honor the thirty-day suspension order of the Court. The Montana Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than seven months. The Court further ordered the attorney pay the costs of the proceedings. *In re Shields*, MT PR 07-0036 (2007). (In 2009, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Forging signature on sale and purchase documents. The allegations in the Formal Complaint included the following. Attorney was hired to represent his client regarding a dispute over the terms of a Buy-Sell Agreement. The attorney's client initially purchased property from a real estate developer and later sold it. The Buy-Sell Agreement contained alleged misrepresentations. A General Release, an Addendum to the Buy-Sell Agreement and an Assignment of the Addendum were prepared to effectuate a settlement. The attorney's client attempted to obtain the purchaser's signature on the Release, but she did not sign it. The attorney scrawled on the signature line to make it appear she had signed it. His client then returned the Release to the Releasees and sought payment. According to the Montana Supreme Court's Order, the attorney filed his *Conditional Admission and Affidavit of Consent* with the COP, who recommended to the Montana Supreme Court that his tendered admission be approved and that the attorney should be disciplined for his admitted violations of Rule 8.4(c), MRPC. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney be suspended from the practice of law for a fixed term of 90 days. The Court further ordered the attorney pay the costs of the proceedings. *In re Udell*, MT PR 07-0236 (2007).

Conviction of Felony Wire Fraud. (Reciprocal Discipline) Attorney was disciplined by the Washington Supreme Court, which provided ODC with copies of relevant documents. Attorney violated Rules 8.4(b) and (c) of the Rules of Professional Conduct as well as Rule 8.4(i) of the Washington Rules of Professional Conduct, which, together with other misconduct, resulted in his conviction of Felony Wire Fraud in Federal District Court for the Western District of Washington. Attorney was disbarred from the practice of law in Washington. The Montana

Supreme Court ordered the imposition of identical discipline and disbarred the attorney from the practice of law in Montana and payment of costs of the proceedings. *In re Tezak*, MT PR 07-0239 (2007).

Misappropriation of client's funds for personal use. The client hired the attorney to represent him as personal representative of his father's estate. The attorney received \$74,000 from the decedent's pension plan on behalf of the estate. The attorney misappropriated for her own use at least \$52,131.21 of the pension plan money. The client filed an application with the State Bar of Montana's Lawyers Fund for Client Protection. The Lawyers Fund paid the estate \$52,131.21. The Supreme Court of Montana found that the attorney misappropriated \$52,131.21 from the estate for her own use, admitted the criminal act of felony theft of client's funds, and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in the misappropriation of client funds. The Court found clear and convincing evidence that the attorney violated MRPC Rules 1.15, 8.4(b), and 8.4(c). The Court ordered the attorney be disbarred and be assessed payment of the costs of the proceeding. *In re Dupuis*, MT PR 06-0006 (2006).

Misleading statements regarding status of representation. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting violation of Rule 8.4(c), MRPC. The Montana Supreme Court accepted his admission and publicly censured the attorney. The Court also ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Ranstrom*, MT 05-041 (2005).

Misrepresentations to the bankruptcy court/fee application not supported by good faith. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violation of Rule 8.4(c), MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Misappropriated client funds for personal use; conviction of Federal Felony Wire Fraud and Bankruptcy Fraud. Attorney misappropriated money from his clients and used it for his own personal use and benefit fully knowing that the monies and funds were intended for other purposes related to his representation. Specifically, he wired a client's \$12,500 settlement check, made payable directly to her, to his firm's operating account and used it for his own personal benefit. In a second case, he received a bankruptcy client's \$557 federal tax refund check, fraudulently deposited it into his operating account and used it for his own purposes. The attorney resigned his membership to the Montana State Bar before federal criminal charges were filed against him. He was charged with Wire Fraud in violation of 18 U.S.C. § 1343 and Bankruptcy Fraud in violation of 18 U.S.C. § 153. He pled guilty to both counts and was sentenced to 18 months on each count to run concurrent, three years of supervised release on each count to run concurrent, and payment of restitution. The attorney was disbarred several years prior for his conviction of felony theft of client funds and served time in prison; his law license was reinstated 12 years later. After ODC filed a Petition pursuant to Rule 23, MRLDE, the Montana Supreme Court found the attorney's crimes were ones that affected his ability to practice law and immediately suspended him pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rules 8.4(b) and

(c), MRPC, and recommended the attorney be disbarred for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendations in their entirety and disbarred him from the practice of law in the State of Montana. *In re Martin E. Alback*, MT PR 10-0266 (2011).

Nolo contendere plea of Felony Issuing Bad Checks—Common Scheme. Attorney pled *nolo contendere* to the felony charge of Issuing Bad Checks—Common Scheme, in violation of § 45-6-316(3), MCA. She allegedly issued three checks totaling \$8,000 to a credit union, knowing they would not be paid by the depository. The district court adjudged and decreed the attorney guilty of the offense charged and imposed a six-year deferred sentence, subject to certain terms and conditions of probation. A Petition to Revoke was subsequently filed alleging the attorney violated the terms and conditions of probation. By Judgment of March 9, 2010, the attorney's prior sentence was revoked, and a new six-year deferred sentence was imposed, subject to certain additional terms and conditions of probation. The Montana Supreme Court found that, pursuant to Rule 23, MRLDE, the crime was one that affected her ability to practice law and immediately suspended her pending the final disposition of a disciplinary proceeding. Following a dispositional hearing, COP found the attorney violated Rules 8.4(b) and (c), MRPC, and recommended the attorney be disbarred and assessed the costs of the proceedings for her violation of her ethical duties. The Court adopted COP's Findings of Fact and Conclusions of Law and Recommendation in their entirety and disbarred her from the practice of law in the State of Montana and ordered her to pay the costs of the disciplinary proceedings. *In re Mary Ann Sutton*, MT PR 10-0253 (2011).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.4(b), 4.1(a), 8.4(c), and 8.4(d). The Montana Supreme Court accepted the attorney's tendered admission and ordered that the attorney be disciplined with public censure, a 30-day suspension from practice, two years of probation, and an assessment of the costs of the disciplinary proceedings. *In re D'Alton*, MT PR 06-0235 (2006).

Misrepresentations to the court and Special Counsel. Attorney was hired by the client to obtain a parenting plan for her minor child. The attorney misrepresented to the court that his client had stipulated to a Final Parenting Plan, when she had not. When, on behalf of the COP, the Special Counsel requested records in support of the attorney's position, the attorney produced handwritten notes with incorrect dates relating to his representation. In response to questions from the Special Counsel regarding these notes, the attorney admitted he had attempted to make them look legitimate and that the events never, in fact, occurred. The attorney later specifically admitted this misrepresentation to the Special Counsel. The Montana Supreme Court determined this misrepresentation violated Rule 8.4(c), MRPC. Due to this and several other violations, the Court suspended the attorney for 60 days and ordered him to pay the costs of the COP proceedings against him pursuant to Rule 9(A)(8), RLDE. *In re Anciaux*, MT 03-061 (2005).

Reinstatement. Attorney was suspended from the practice of law in Montana for violations of Rules 1.16, 8.4(c)-(d) and 3.3(a)(1), MRPC, in 1988. The Montana Supreme Court denied the attorney's petition for reinstatement the following year, finding he was less than candid about efforts to take the bar in other states and he continued to deny wrongdoing in one of the matters for which he was suspended. During his suspension, the attorney did not practice law in

Montana. The COP submitted its recommendations and stated it believed a sufficient amount of time had passed for the attorney to understand the importance of absolute candor. The attorney no longer denied his violation. The Montana Supreme Court accepted the COP's recommendations and reinstated the attorney to the practice of law in Montana. He was ordered to complete thirty hours of Continuing Legal Education and pay the costs of disciplinary proceedings. *In re Ziskind*, MT 87-416 (2005).

Presented document bearing forged signature of client to court. Attorney represented client in bankruptcy proceeding. The attorney presented to the bankruptcy trustee a "Representation and Fee Agreement" bearing the attorney's signature and a "forged, 'cut and paste' signature" of his client, according to the Commission on Practice's Findings of Facts. The attorney admitted violating Rule 8.4(c), MRPC, and other rules of professional conduct. The Commission on Practice reviewed the attorney's tendered admission and recommended approval to the Montana Supreme Court. The Court accepted the Commission's recommendation and suspended the attorney for 30 days for his admitted violations. *In re Shields*, MT 04-197 (2004).

Suspended attorney appeared telephonically and self-identified as "representing" party. The attorney admitted violating several rules of professional conduct pursuant to a Rule 26 tendered admission. The Montana Supreme Court had previously suspended the attorney from the practice of law for previous misconduct. The attorney's former law partner hired the suspended attorney to work as a paralegal. The suspended attorney was directed to request a continuance in a matter. Instead, he appeared at a telephonic hearing, stated his name and described himself as representing a party. The suspended attorney moved the court for summary judgment, which was granted. The court later determined the attorney was suspended and set aside the judgment. The attorney admitted his conduct violated Rule 8.4(c), MRPC. The Commission on Practice reviewed the attorney's admission and recommended approval to the Montana Supreme Court. The Court accepted the recommendation and suspended the attorney for not less than three years for this and other misconduct. *In re Hussey*, MT 03-735 (2004).

Failure to hold client funds separate from attorney funds; failure to supervise employee. The attorney, pursuant to a Rule 26, MRLDE, tendered admission, admitted the following: The attorney employed a secretary/paralegal for approximately 4 years who embezzled several hundred thousand dollars from estates represented by the attorney. The secretary wrote herself and her creditors checks on the law firm account and forged the attorney's signature. The attorney had access to all bank records, client files, bank statements and client accounts during the period of employment. In addition, client funds were also commingled with and used for general office purposes. Business records showed the attorney's office accounts would have operated in the negative from time to time but for unearned client funds and embezzled money in the office accounts. Despite having access to the pertinent records, the attorney failed to observe his employee's activities or properly monitor the client accounts. The attorney admitted violating numerous rules of professional conduct as a result of these events, including Rule 8.4(c), MRPC, for engaging in conduct deemed to involve dishonesty, fraud, deceit or misrepresentation. The Montana Supreme Court accepted the attorney's admission and indefinitely suspended the attorney for not less than 18 months and ordered the attorney to pay restitution to his clients. *In re McGee*, MT 03-723 (2004).

Practicing law while suspended. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rules 1.1, 1.3 and 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a year for this and other conduct violative of the MRPC. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC. After a formal complaint was filed, the attorney tendered his admission pursuant to Rule 26, MRLDE, for violating these rules and Rule 8.1 for failing to respond to disciplinary inquiries. The Commission recommended the Court adopt the attorney's tendered admission. The Court adopted the tendered admission and placed the attorney on probation for five years, subject to certain terms and conditions, including, but not limited to, resignation of his law license. *In re Wing*, MT 03-585 and MT 04-872 (2005).

Misleading statements regarding the status of the representation. The attorney submitted a tendered admission to a violation of Rule 8.4(a), (c) and (d), MRPC, by making false and misleading statements to his client about his work on the matter and the status of the matter, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Misappropriation of funds. Attorney admitted misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating Rule 8.4(c), MRPC, for misconduct that included withholding \$32,000 from a client's personal injury settlement and using the money not to pay the client's medical lien claimant, but for personal use. The attorney also "misappropriated in excess of \$14,000 from the Yellowstone County Bar Association," according to the Commission on Practice's recommendation that the Montana Supreme Court approve the attorney's admission. For this and other violations of the rules of professional misconduct, the Court indefinitely suspended the attorney for not less than four years and ordered him to pay restitution. *In re Yoder*, MT 02-753 (2003).

Frivolous attorney's lien. Attorney represented plaintiffs in a construction dispute. The case was subsequently settled and dismissed prior to any judgment. A dispute arose between the attorney and his clients over the fee. The attorney subsequently conceded the fee dispute and wrote a letter intended to write off the fee. The attorney then changed his mind and filed a Notice of Attorney's Fee Lien in a separate dissolution action that he was handling for one of the plaintiffs, which improperly included the amounts alleged to be owing in connection with the construction litigation. The attorney did not advise his client he had changed his mind about pursuing the fee in the construction case. The Commission on Practice determined that the attorney violated Rule 8.4(c), MRPC, by knowingly submitting a false lien. After rejecting certain factual findings, the Supreme Court adopted the Commission's recommendation and

issued a public censure to the attorney for this and other violations. *In re Keedy*, MT 02-160 (2003).

Civil judgment against attorney for fraud stemming from non-legal business activity. An attorney purchased a business unrelated to the practice of law. As part of the financing, the attorney promised two creditors first lien priority. One of the creditors sued the attorney for fraud and obtained a judgment. The Commission on Practice determined there was clear and convincing evidence of fraud and a violation of Rule 8.4 (c) and (d), MRPC, on the part of the attorney. The Montana Supreme Court adopted the findings of the Commission and suspended the attorney for not less than seven months. *In re Hussey*, MT 00-162 (2001).

Willful failure to file income tax return is not criminal conduct involving dishonesty, fraud, deceit or misrepresentation. Attorney self-reported his misdemeanor conviction for failing to file federal income tax returns. The Commission on Practice determined there was insufficient evidence to prove the conduct reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer, or that the conduct involved dishonesty, fraud, deceit or misrepresentation. The attorney did file requests for extensions with the Internal Revenue Service, but never filed the returns. Accordingly, the Commission did not find violations of Rules 8.4(b) and (c), MRPC. However, the Commission did conclude the attorney's conduct was prejudicial to the administration of justice and found a violation of Rule 8.4(d), MRPC. The Montana Supreme Court publicly censured the attorney for the misconduct. *In re Paskell*, MT 99-267 (2000).

Failing to provide services or refund retainer. Attorney undertook representation of a client in a malpractice action against another lawyer. After requesting and receiving a retainer, the attorney failed to provide any legal services whatsoever to advance the malpractice claim, failed to refund the retainer, failed to communicate with the client for approximately two years and failed to provide the client with information that would allow the client to contact him. The Commission on Practice found the attorney's conduct to violate Rule 8.4(c), MRPC, among others. The Montana Supreme Court indefinitely suspended the attorney for no less than three years. *In re Bowles*, MT 98-719 (2000).

Repeated failure to refund retainers/failure to pay employee/making misrepresentations to client in person and through employee. The Commission on Practice determined an attorney violated Rule 8.4(c), MRPC, on six occasions for promising clients a refund of retainer fees and failing to provide such refunds. In a sixth instance, the Commission found a violation of 8.4 (no subsection specified) for failing to pay an employee and directing the employee to make misrepresentations to clients about their cases. Mixed in with the failures to refund retainers, the Commission noted instances in which the attorney made misrepresentations to clients about their cases. The attorney--who was indefinitely suspended at the time--was disbarred for these and numerous other violations, which the Montana Supreme Court described as an unparalleled "pattern of unethical conduct, disregard for the interests of her clients and others, and disdain for the fundamental precepts of honesty and trust, all of which render her patently undeserving of the privilege of being a member of the bar." *In re Sapp-LeClaire*, MT 97-608 (1998).

Theft and disorderly conduct stemming from the taking of a file from another lawyer's office are grounds for discipline. The attorney entered guilty "Alford" pleas to misdemeanor charges

of theft and disorderly conduct after an altercation at another lawyer's office. The attorney "forcibly removed a file from another attorney's law office and then involved himself in an altercation with the attorney's secretary," according to a Montana Supreme Court record. Despite the attorney's argument that he was never convicted because his sentence was deferred for six months on the condition he commit no further violations of the law, the Commission on Practice found clear and convincing evidence the attorney was convicted of a serious crime as defined by Rule 16, MRLDE, and that such conviction constitutes a violation of Rule 8.4(c), MRPC. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for violating Rule 8.4(c), MRPC, and other misconduct unrelated to this violation. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney's petition for reinstatement.)

Misrepresentation to the court. The Attorney represented one party in a domestic dissolution. The other party was not represented. The former spouses executed a settlement agreement in October 1993. In February 1994, the parties met with the attorney again and discussed a modification to the settlement agreement. The unrepresented party signed the modification prepared by the attorney, but the client did not. The attorney told the unrepresented party that the modified agreement would be presented to the court. Four days later, the attorney appeared before the court and presented the October 1993 agreement without mentioning the modified version and represented the 1993 agreement was the full and final settlement of all issues. The unrepresented party was not present at the hearing. The court later determined what had happened and held the attorney in contempt. The Commission on Practice found the attorney's conduct to violate Rule 8.4(c), MRPC, and other rules of conduct. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for this and other misconduct. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney's petition for reinstatement.)

Attorney practiced while suspended. The Montana Supreme Court issued to the attorney an order to show cause why his name should not be dropped from the rolls of practicing attorneys for failure to comply with CLE requirements. The attorney did not respond and his name was struck from the rolls. Starting a week after the court took that action, the attorney prepared and filed documents in a variety of cases until a court clerk refused his documents because of the status of his license. The attorney then filed the required affidavit. The Montana Board of Continuing Legal Education then sent the Supreme Court a letter to the effect that the attorney had complied with his CLE requirements. The Court ordered that the attorney would be reinstated to practice as soon as he paid his attorney license tax and state bar dues. The attorney continued to do legal work until another court clerk refused his documents. The attorney then complied and filed a petition for reinstatement, which was granted. The Commission on Practice determined the attorney had practiced law while suspended, a violation of Rule 7, MRLDE, and Rules 8.4(c) and (d), MRPC. The Montana Supreme Court adopted the Commission's findings and indefinitely suspended the attorney for not less than six months. *In re Quinlan*, MT 94-161 (1996).

Theft of property of minimal value constitutes violation. Attorney took two packages of diet gum and a "sports string glass holder with a value of \$6.95" without paying for the items from a drug store in Anaconda. The attorney was arrested and prosecuted for misdemeanor theft,

although the charges were ultimately dismissed. The attorney stipulated to the facts and admitted the prosecutor for the Commission on Practice could meet his burden in showing an ethical violation. The Commission found the attorney's conduct violated Rule 8.4(b) and (c), MRPC. The Montana Supreme Court adopted the findings of the Commission and publicly censured the attorney for his misconduct. *In re McKeon*, MT 92-440 (1993).

Lying to client. The attorney was hired to represent a client who purchased property encumbered by liens at an auction, despite representations to the contrary by the sellers. The attorney was hired in 1988 and told the clients that their case was on the case calendar and would be heard by a judge. Next, the attorney suggested the clients hire other counsel and he would send the replacement lawyer their file. When the new lawyer was hired, the attorney told his clients he had mailed the file. In fact, the file was hand-delivered shortly before a meeting between the parties. When the replacement attorney examined the file, he determined that no complaint had ever been filed on behalf of the clients. The Commission on Practice concluded the attorney had violated Rule 8.4(c), MRPC, in that he "engaged in conduct involving deceit, dishonesty and misrepresentation." *In re Johnstone*, MT 92-279 (1993).

Misappropriation of client funds. Attorney was appointed guardian of the person and estate of a client. The man died in 1982. A state district judge approved the attorney's report listing the assets of the estate and allowed the attorney his fee for his services as guardian. When no one initiated the probate of the estate by 1989, the U.S. Veteran's Administration requested the county public administrator to do so. The administrator discovered irregularities and eventually recovered a judgment against the attorney. The Commission on Practice found the attorney had taken money from the account improperly. "He offered no explanation for his conduct," says the Commission findings. "The obvious inference is he thought there were no heirs to dispute or question his action," and the attorney took money from the estate between 1984 and 1987. The Commission determined that the attorney was dishonest and had engaged in misrepresentation in his expropriation of estate funds, in violation of Rule 8.4(c), MRPC. The Montana Supreme Court adopted the Commission findings and disbarred the attorney for this and other MRPC violations. *In re Romine*, MT 92-251 (1993).

8.4(d):

Making false statement to the Supreme Court on petition for reinstatement to active status prejudicial to the administration of justice. Attorney's law license was transferred to inactive status by the Montana State Bar for non-compliance with CLE requirements. While on inactive status, he filed pleadings in district court on his client's behalf in a declaratory judgment matter and continued his representation in the matter for more than one year constituting the unauthorized practice of law in violation of Rule 5.5, MRPC. The attorney petitioned the Supreme Court for reinstatement to active status nearly two years later, and the Court granted his petition the following day. In his petition for reinstatement, the attorney advised the Court he had not committed any acts or omissions while not on active status that would be sanctionable under the MRPC. His unauthorized practice of law was a sanctionable offense under the MRPC. His false statement to the Court violated Rules 8.1, 8.4(c), and 8.4(d), MRPC. After ODC filed its Complaint, alleging violations of Rules 5.5, 8.1(b), 8.4(c), and 8.4(d), MRPC, the attorney failed to file an Answer, and default was entered, deeming all allegations of the Complaint

admitted. After a hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation for Discipline, which the Court accepted and adopted. The Court indefinitely suspended the attorney for not less than seven months and ordered him to pay costs of the disciplinary proceedings for violating Rules 5.5, 8.1, 8.4(c) and 8.4(d), MRPC. *In re Patrick Begley*, MT PR 19-0444 (2020).

Engaging in conduct prejudicial to the administration of justice.

Attorney represented a real estate developer and his two LLCs at various times, one of which was formed to act as general contractor for a construction project in Montana. The developer was the sole member of both LLCs. A dispute arose between LLC II, as general contractor, and a subcontractor, resulting in a lawsuit. The arbitration clause in the contract limited damages to actual damages. After arbitration, actual damages were awarded to both the general contractor and the subcontractor, with the general contractor receiving a net award. The general contractor/LLC II subsequently dismissed itself as plaintiff in the lawsuit, and LLC I filed a Second Amended Complaint to include LLC II as a defendant, making the two LLCs' interests adverse. After the general contractor's insurance company denied coverage and declined to defend against the claims against it, the attorney applied and was admitted *pro hac vice* to defend the general contractor in the lawsuit. The general contractor admitted all allegations in the Complaint and failed to assert any affirmative defenses. The attorney colluded with the developer to amend the contract to eliminate the arbitration clause and limitations on damages to benefit LLC I. Because arbitration had already occurred, the amendment was backdated to a time prior to arbitration. They further colluded to have the general contractor stipulate to judgment in favor of LLC I, and LLC I would not execute judgment if the general contractor signed a Confession of Judgment for \$12 million, which they would seek to collect from the insurers. After judgment was entered, the general contractor's insurer successfully sought to intervene and challenge the reasonableness of judgment and whether it was the product of collusion. The district court concluded the judgment was not reasonable but awarded a \$2.4 million judgment against the general contractor/LLC II in favor of LLC I. The insurer also successfully moved to revoke the attorney's *pro hac vice* status and submitted a grievance against the attorney to ODC. Prior to his *pro hac vice* revocation, the attorney demanded the insurer withdraw its complaint as a condition of a settlement of all claims. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation for Discipline to the Montana Supreme Court, concluding the attorney violated Rules 8.4(c) and 8.4(d), MRPC, by failing to disclose the fraudulent nature of the contract amendment. He further violated Rule 8.4(d), MRPC, by colluding with the plaintiff, LLC I, as attorney for the defendant, LLC II, to conduct a sham trial to create a record to use against another defendant by lying to or misleading the court; and by improperly demanding as a condition of settlement of a claim that the ethical complaint filed against him be withdrawn. After the attorney and ODC filed objections and responded respectively, the Court accepted and adopted COP's Findings of Fact and Conclusions of Law but rejected its recommendation. For this and other misconduct, the Court disbarred the attorney for violating Rules 1.7, 3.1, 3.3, 8.4(c), and 8.4(d), MRPC, and ordered him to pay costs of the disciplinary proceedings. *In re Jon E. Cushman*, MT PR 17-0665 (2019).

Conduct prejudicial to the administration of justice. Attorney represented the husband as an interested party in appellate and post-remand matters in his wife's pending guardianship

proceedings. His wife was judicially determined to be incapacitated and was appointed guardians and an attorney, who also had the powers and duties of a guardian *ad litem*. The client was deemed not suitable to be his wife's guardian, and orders regarding visitation and attorneys' fees awards had been entered. The attorney was unsuccessful in obtaining additional visitation rights for her client, in challenging the orders by which her client was not appointed his wife's guardian, and in challenging the award of spousal support and attorney fees. After the district court's orders were affirmed on appeal, the attorney sought surrogates, including Disability Rights Montana ("DRM") and another attorney, to represent her client's wife without disclosing to them she was already represented by a court-appointed attorney. An association agreement was made between the surrogate attorney and DRM whereby the surrogate would petition to remove the guardians on her purported new client's behalf and relocate her closer to her husband, and DRM would oversee the litigation. The surrogate attorney contacted her purported new client on more than one occasion without the knowledge or consent of her court-appointed attorney, the guardians' counsel, or the district court. The surrogate attorney also entered into a limited scope attorney-client agreement with the husband without seeking or obtaining consent to the conflict or the agreement from any party; DRM was not aware of the dual representation. The husband's first attorney, who consented to the representation, would remain as the sole point of communication between her client and the surrogate; she also assisted the surrogate in drafting pleadings. The attorney then used the surrogate attorney's purported representation of the wife to pursue expanded visitation for the husband. After the surrogate attorney filed a petition concerning the husband's visitation, DRM terminated its association agreement with her. She eventually moved to withdraw her petition, and the district court dismissed it; however, the deception regarding her dual representation continued. The attorney violated Rule 8.4(d), MRPC, in that her conduct was prejudicial to the administration of justice. After a formal hearing, COP issued its Findings of Fact, Conclusions of Law and Recommendation, which the Court accepted and adopted. For her misconduct, the Court indefinitely suspended the attorney for a minimum of seven months for violating Rules 4.2(a), 8.4(a), and 8.4(d), MRPC, and ordered her to pay costs of the disciplinary proceedings. *In re Tina L. Morin*, MT PR 17-0448 (2019).

Conduct prejudicial to the administration of justice. Attorney appeared on her brother's behalf in their mother's guardianship matter. In pleadings, she made baseless allegations of unethical conduct against the joint conservator, the judge, and the guardian and made demeaning and unwarranted attacks regarding their services and integrity. The joint conservator was forced to defend himself against a lawsuit filed by the attorney, which the district court judge found frivolous. She made unsupported allegations of impropriety by the court; made unsupported allegations of criminal misconduct and false, misleading, and uncivil statements against the guardian; made false statements or statements made with reckless disregard as to their truth or falsity regarding the judge's integrity; and she presented no evidence in support of her affirmative defenses. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the attorney filed objections. COP concluded the attorney's unsupported allegations and statements violated Rules 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. For this and other misconduct, the Court disbarred the attorney and ordered her to pay \$26,633.75 in costs of the disciplinary proceedings for violating Rules 1.7, 3.1, 3.3, 8.2, 8.4(c), and 8.4(d), MRPC. *In re Genet McCann*, MT PR 16-0635 (2018).

Conduct prejudicial to the administration of justice. Attorney was retained to pursue an appeal in a domestic relations case, which the Supreme Court ultimately dismissed for the attorney's failure to file an opening brief. He then filed an untimely Rule 60 motion for relief in district court and a motion to disqualify the district court judge for his alleged bias, which the Supreme Court denied. The attorney issued a subpoena and served it on the presiding district court judge to be deposed in connection with the Rule 60 motion. The judge subsequently issued an Opinion and Order, denying the Rule 60 motion, quashing the subpoena, and ordering the attorney to appear and show cause why his conduct did not violate Rule 11, M.R.Civ.P. The judge also opined the attorney's factual contentions had no evidentiary support, were not warranted by existing law, and most were not supported by argument. After the show cause hearing, the judge issued his findings, conclusions, and sanctions order, determining that the attorney's testimony was not credible; he failed to adequately review the record; he failed to determine whether the factual contentions in his motion had evidentiary support; and his adamance in maintaining the contentions were factual and evidentiarily supported was highly troubling. The judge further held the attorney failed to research his legal contentions, which were not supported by legal authority; failed to make good faith legal arguments; used highly inflammatory language to make baseless accusations of conspiracy, fraud, bias, unethical behavior and illegal acts against numerous people, including the judge; filed his motion to harass the adverse party, her attorneys, witnesses, the Court and court staff; asserted baseless factual contentions impugning the Court's integrity and made baseless assertions against adverse counsel with reckless disregard for their truth or falsity. The Montana Supreme Court affirmed the Sanctions Order, and the attorney paid the \$10,000 sanctions. The attorney violated Rule 8.4(d), MRPC, by engaging in conduct prejudicial to the administration of justice. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court indefinitely suspended the attorney for not less than seven months, consecutive with discipline imposed in PR 16-0411 and PR 17-0026, and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 3.1(a), 3.5(c), 8.2(a), and 8.4(d), MRPC. The attorney's petition for re-hearing was denied, and his petition for writ of certiorari to the U.S. Supreme Court was also denied. *In re Robert C. Myers*, MT PR 16-0245 (2017).

Unauthorized practice of law prejudicial to administration of justice. (Reciprocal Discipline) Attorney unconditionally admitted to the allegations in the Petition for Disciplinary Action filed by Minnesota's Director of the Office of Lawyers Professional Responsibility; specifically, he engaged in the unauthorized practice of law while not licensed in the State of Minnesota in violation of Minnesota's Rules of Professional Conduct 5.5(a), 5.5(b), and 8.4(d). The Minnesota Supreme Court approved the recommended disposition and publicly reprimanded the attorney and ordered him to pay \$900 in costs. Pursuant to Rule 27, MRLDE, the Montana Supreme Court imposed reciprocal discipline and publicly reprimanded the attorney. Minnesota's Rules of Professional Misconduct 5.5(a), 5.5(b), and 8.4(d) are similar or equivalent to Montana's Rules 5.5(a) and 8.4(d), MRPC. *In re Andrew Small*, MT PR 17-0150 (2017).

Attorney's attempts to solicit ODC grievance withdrawal conduct prejudicial to the administration of justice. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules

1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC, in relation to three separate matters. He admitted violating Rule 8.4(d) in one case for entering into an agreement with a client to provide bi-weekly status reports regarding his case if he would withdraw his ODC grievance. After a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. For this and other misconduct, the Court ordered the attorney be publicly censured by the Court and pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(d) and 8.4(d), MRPC. *In re David S. Freedman*, MT PR 16-0239 (2016).

Conduct prejudicial to the administration of justice. Attorney filed a lawsuit against an electric company seeking damages for property loss after the electric company terminated services to a townhouse. Despite his assertion, he did not own the townhouse. He claimed \$100,000 in damages to the townhouse and \$40,000 to his personal property. In deposition testimony, the attorney admitted he held no interest in the townhouse and agreed to amend his pleading. His amendment changed his assertion of “owned and occupied” to “occupied and paid for” the townhouse. During discovery, he provided inaccurate and untruthful information regarding his alleged damages, identity of damaged property, and his ownership in the townhouse. During litigation, the district court found the attorney in contempt for failure to comply with a sanctions order. After investigation, the electric company filed a second motion for sanctions based upon the attorney’s false damages claims. The district court determined he overstated the amount of damages by at least \$18,700 in an attempt to obtain a larger settlement or damages award and dismissed his claims as an appropriate sanction. The attorney appealed, misrepresenting in his notice that no hearings were ever held, thus no transcripts were available. The attorney’s conduct violated Rule 8.4(d), MRPC, for engaging in conduct prejudicial to the administration of justice. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation, which the Court adopted. The Court ordered the attorney be suspended from the practice of law for 60 days and pay costs of the disciplinary proceedings for violating Rules 3.1(a), 3.4(b) and (c), 8.4(c) and (d), MRPC. *In re Larry G. Schuster*, MT PR 15-0264 (2016).

Conduct prejudicial to the administration of justice. (Reciprocal Discipline) Attorney was suspended for a period of nine months by the Wyoming Supreme Court for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(1), 8.4(c), and 8.4(d) of the Wyoming Rules of Professional Conduct. He was also ordered to pay \$11,641.17 in restitution and \$25,747.99 in costs. His conduct arose out of a lawsuit he filed against former clients with whom he entered into a real estate deal, allegedly out of retaliation. Following a hearing, the Board found the attorney made numerous false statements of fact to the court during the lawsuit and further offered evidence to the Board he knew to be false; knowingly disobeyed his obligation under the rules of a tribunal by failing to prepare and approve orders of the court as directed; made frivolous discovery requests and failed to make reasonably diligent efforts to comply with the former clients’ legally proper discovery requests; used means that had no other purpose than embarrassing, delaying, or burdening the former clients; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation during the lawsuit; and engaged in conduct that is prejudicial to the administration of justice. Pursuant to Rule 27A, MRLDE (2011), the Montana Supreme Court suspended the attorney from practicing law in Montana for a period of nine months for violating Rules 3.3(a), 3.4(c), 3.4(d), 4.4(a), 8.4(a), 8.4(c), and 8.4(d). *In re Laurence W. Stinson*, MT PR 16-0132 (2016).

Incompetence, lack of diligence, failure to properly represent clients resulting in conduct prejudicial to administration of justice. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after a formal complaint was filed. The attorney admitted to facts as alleged in the Complaint and to violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. While representing two clients in their cases before the Peace Officers Standards and Training (“POST”) Council, the attorney failed to follow applicable Rules of Procedure as ordered by the hearing examiner without lodging proper objections; failed to meet required deadlines or appear at scheduled proceedings; failed to abide by pre-hearing discovery procedures; and failed to comply with the hearing examiner’s orders and respond properly to discovery requests. He failed to seek judicial review of the POST Council or Board of Crime Patrol’s respective decisions regarding one client at his client’s direction. He did request judicial review in his second client’s matter, but he failed to serve it, as instructed by his client. Ultimately, one client’s POST certificate was permanently revoked, and the other client’s POST certificate was suspended for 15 years. Following a Rule 26 hearing, COP issued its Order on Rule 26 Proceedings wherein it accepted the attorney’s *Conditional Admission and Affidavit of Consent* and ordered the attorney be publicly admonished by the Commission and pay the costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 3.4(d), and 8.4(d), MRPC. *In re Edward G. Chester*, MT PR 14-0475 (2015).

Conduct prejudicial to the administration of justice. (Reciprocal Discipline) Attorney was suspended for 91 days by the Florida Supreme Court and ordered to pay \$4,187.37 in costs. The attorney made misrepresentations to his client, mishandled his client’s cost funds by applying them to his attorney’s fees, deliberately failed to finish his client’s matter, and failed to properly and adequately communicate and address issues with his client. He specifically failed to correct or address billing issues, consciously chose not to file a corrected amended judgment for his client unless and until he received all fees from the client, failed to take steps to follow up or move to withdraw, sent unpaid bills to a collection agency before correcting double-billing issues and only correcting his error after his client complained to the Better Business Bureau, improperly applied prepaid cost funds to his fee without his client’s permission, failed to address issues related to his failure to retain services of a court reporter for trial as directed by his client, and failed to submit a corrected amended judgment for more than two years after the incorrect judgment had been issued. The attorney was found to have violated Florida Rules of Professional Conduct 4-1.2(a), 4-1.3, 4-8.4(c), 4-8.4(d), and 5-1.1(b), which are similar or equivalent to Montana’s Rules 1.2, 1.3, 1.15, 1.18, 8.4(c) and 8.4(d). Pursuant to Rule 27, MRLDE, the Montana Supreme Court subsequently imposed identical discipline and suspended the attorney from practicing law in Montana for 91 days. *In re Charles P. Vaughn*, MT PR 14-0723 (2015).

Incompetence, lack of diligence, failure to protect client interests resulting in conduct prejudicial to administration of justice. Attorney was paid \$5,000 to represent his client in post-conviction proceedings. He failed to timely file a petition for post-conviction relief and abandoned his client, failed to respond to his client’s requests for status updates, failed to notify him that he did not intend to pursue his post-conviction relief petition, and misrepresented to his client’s brother that he had prepared and filed the petition and would provide proof thereof. The attorney terminated his representation after the filing deadline had passed without consent or

notice to his client. He failed to protect his client's interests, failed to advise him of the applicable deadlines and failed to timely return unearned fees. He also failed to timely and promptly respond to ODC's requests for his response to his client's grievance and failed to respond to ODC's requests for additional information. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court suspended the attorney from practicing law for 60 days and ordered him to pay costs of the disciplinary proceedings for violating Rules 1.1, 1.3, 1.4, 1.16(d), 4.1, 8.1(b), 8.4(c) and 8.4(d), MRPC. *In re Brian Kohn*, MT PR 14-0468 (2015).

Engaging in conduct prejudicial to the administration of justice by settling cases without client knowledge or consent; failure to communicate settlement to client. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed, which the COP rejected after holding a private hearing. The attorney submitted a second *Conditional Admission and Affidavit of Consent*, and ODC and the attorney subsequently submitted a *Rule 26B Stipulation* to COP for consideration with the second *Conditional Admission*. The attorney admitted to the material allegations of the Complaint and to misappropriating between \$32,714 and \$34,950 from ABOTA and at least \$321,866.33 from former clients in violation of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC. The formal complaint included 33 counts of misconduct and theft of client or other funds to which he was not entitled. In multiple client matters, the attorney settled the clients' cases without their knowledge or consent, failed to communicate the settlement offer to the client, failed to communicate the settlement and receipt of funds to the client, or lied to clients or third parties about receiving the funds. In doing so, the attorney violated Rules 1.2, 1.4, 8.4(c) and 8.4(d), MRPC. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Decision on Resubmitted Rule 26 Conditional Admission and Affidavit of Consent to the Montana Supreme Court, which the Court accepted and adopted. For this and other misconduct, the Court disbarred the attorney for violations of Rules 1.2, 1.4, 1.15, 1.16, 1.18, 4.1, 8.4(b), 8.4(c), and 8.4(d), MRPC, and ordered him to reimburse ABOTA and individuals from whom he stole funds, totaling \$495,328.14 (attorney fees were disgorged). *In re David M. McLean*, MT PR 14-0737 (2015).

Making misrepresentations to Detention Officers with intent to deceive in relation to a pending domestic dispute case. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the Commission on Practice after ODC filed a formal complaint, admitting violations of Rules 8.4(c) and 8.4(d), MRPC, by misrepresenting to the Cascade County Detention Center that he was there to see his client; he provided his business card and driver's license as identification. The purported client was his girlfriend, charged with Partner Family Member Assault for assaulting the attorney in a domestic dispute. He failed to fully disclose to the Detention Officer he was the alleged victim and potential witness. He did so with the intent to deceive the detention officers so he could meet and discuss the case with his girlfriend without being recorded or monitored. At the time of the attorney's misconduct, he was serving his 2-year probation term ordered by the Supreme Court in a prior disciplinary matter. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be

suspended for 45 days and pay costs of the disciplinary proceedings for violating Rules 8.4(c) and 8.4(d), MRPC. *In re Jeffrey Sutton*, MT PR 15-0031 (2015).

Failing to comply with discovery requests, filing frivolous motions and appeals, misrepresenting estate value, resulting in conduct prejudicial to administration of justice. (Reciprocal Discipline) Attorney was disbarred by the Washington Supreme Court for violating Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d) of the Washington Rules of Professional Conduct by his misconduct arising out of litigation involving the probate of his mother's estate wherein he was the personal representative. Even after he was removed as personal representative, he continued to file several frivolous appeals and subsequent litigation resulting in four contempt findings and sanctions against him totaling \$138,000. He knowingly and with dishonest intent violated the rules, causing actual injury to other heirs and the administration of justice. Pursuant to Rule 27A, MRLDE, the Montana Supreme Court imposed reciprocal discipline and disbarred the attorney from practicing law in Montana for violating Montana's equivalent Rules 3.1, 3.4(c), 3.4(d), 8.4(c), and 8.4(d). *In re Russell K. Jones*, MT PR 15-0073 (2015).

Attempting to coerce complainant to settle and release claims against attorney and client and withdraw ethics grievance. Attorney was hired by a widow on a contingent basis to recover damages from a motor vehicle accident, which caused her husband's death. Her husband had no will, and there were multiple heirs to his estate. The attorney filed a lawsuit, and the case settled for \$300,000. Between October 2008 and March 2010, the attorney paid himself \$183,100 when he was only entitled to \$120,000 in attorney fees. He also made other disbursements, including approximately \$51,000 to his client or others on her behalf, \$30,500 to his client's non-attorney advocate, and \$32,524 to others for litigation expenses. No funds were disbursed to the other heirs. By the end of June 2010, the attorney's trust account balance was \$10.47. The personal representative, an heir of the estate, filed an ethics grievance against the attorney, who failed to cooperate with ODC's investigation. In January 2014, the attorney misrepresented to the personal representative he was holding \$60,000.00 in his IOLTA trust account to be disbursed and misstated the law when he advised her she and the other heirs were only entitled to \$17,000 of the settlement funds. He further advised her that although the widow was entitled to 2/3 of the proceeds, she would compromise if the personal representative would sign a settlement agreement and release all claims against the widow and the attorney, including dismissing the grievance she filed against him with ODC. The attorney's attempt to coerce the personal representative to dismiss her grievance against him and settle with his client based upon his misstatement of the law constitutes violations of Rules 8.4(a) and 8.4(d), MRPC. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court accepted and adopted after the parties filed objections, with the exception of disgorgement of fees and the amount of restitution. For this and other misconduct, the Court disbarred the attorney, ordered him to pay restitution totaling \$65,547.10 to the other estate heirs, and pay costs of the disciplinary proceedings for violating Rules 1.7, 1.15, 1.18, 3.3, 5.5, 8.1(b), 8.4(a), 8.4(c), and 8.4(d), MRPC. *In re Randy S. Laedeke*, MT PR 14-0471 (2015).

Failure to respond to disciplinary inquiries, resulting in conduct prejudicial to administration of justice. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the facts as alleged in the Complaint and to violating Rules 8.1(b) and 8.4(d), MRPC, for failure to respond to multiple lawful

demands for information from ODC until after a formal disciplinary complaint had been filed against her. After a Rule 26 hearing, COP submitted its Findings of Fact, Conclusions of Law, and Recommendation to the Montana Supreme Court, which the Court accepted. The Court ordered the attorney be publicly censured by the Court and pay costs of the disciplinary proceedings for violating Rules 8.1(b) and 8.4(d), MRPC. *In re Myshell L. Lyday*, MT PR 15-0032 (2015).

Failure to respond to disciplinary inquiries and failure to appear at disciplinary proceedings, resulting in conduct prejudicial to administration of justice. Attorney failed to respond to ODC's inquiries regarding allegations of ethical misconduct by a U.S. District Court Judge and a former client in two separate matters. The Commission on Practice ordered him to appear before it and show cause why appropriate discipline should not be imposed for his failures to respond or cooperate. He failed to appear at the show cause hearing or to respond at all. ODC filed a formal complaint alleging violations of Rules 8.1(b) and 8.4(d), MRPC, to which the attorney failed to file an Answer, deeming all allegations of the Complaint admitted. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation, which the Court accepted and adopted. The Court disbarred the attorney and ordered him to pay costs of the disciplinary proceedings for violating Rules 8.1(b) and 8.4(d), MRPC. *In re Elmer S. Rhodes*, MT PR 14-0698 (2015).

Failure to inform the court of material facts in ex parte adoption; failure to notify legal parent of adoption proceedings; misrepresenting facts to adoption court; failure to acknowledge parental rights; failure to correct error in adoption proceedings. Attorney represented the mother in post-dissolution custody proceedings and in adoption proceedings. The custody proceedings and the adoption proceedings were assigned to separate judges. The ex-husband, although not the biological father of one child, had joint custody of both children subject to the existing parenting plan. His non-biological child was born during the marriage, he was listed as the father on the child's birth certificate, and he raised the child as his own. While the parenting plan was being re-litigated, the attorney prepared a petition for the mother's new husband to adopt the ex-husband's non-biological child. The mother's motive and intent of the adoption was to frustrate the ex-husband's established parental rights. The attorney did not attach the existing, stipulated parenting plan to the adoption petition, as required by statute, and did not advise the adoption court that the ex-husband had parenting rights of the child. The attorney failed to notify the ex-husband, who maintained joint custody of the child, of the adoption petition, denying him the opportunity to object to the adoption. The petition stated there were no other persons – other than the consenting, biological father and the petitioner – who had an interest in the proceedings and the adoption relieved all other persons of parental duties. After an *ex parte* hearing, the adoption petition was granted. The attorney instructed his client to continue to follow the existing parenting plan, but the mother alienated the ex-husband from the child's life. The ex-husband did not learn of the completed adoption until three years later. He eventually filed a motion to set aside the adoption. Parenting disputes continued, and a trial was held in the dissolution proceedings. The district court determined the mother proceeded with the adoption without notice to her ex-husband in an effort to deprive him of his parental rights. The attorney did not take measures to correct the adoption decree to reflect the approved parenting plan. After a formal hearing, COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rules 3.3(d),

8.4(c) and (d), MRPC, and recommended he be suspended from the practice of law for a period of three months and be assessed the costs of the disciplinary proceedings. The Court accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Roy W. Johnson*, MT PR 13-0079 (2014).

Lack of competence and diligence; failure to communicate; conduct involving dishonesty, fraud, deceit and misrepresentations; trust account violations; misappropriation and failure to safekeep property; failure to withdraw; failure to protect client interests; filing frivolous lawsuit; failure to respond to disciplinary inquiries. (Reciprocal Discipline) Attorney was disbarred by the Supreme Court of Arizona and ordered to pay \$25,365.92 in restitution to former clients and \$2,634.87 to the State Bar of Arizona for the costs of the disciplinary proceedings. While representing clients, the attorney made false representations to a lienholder with intent to deceive and to persuade the lienholder to not collect on its lien. He made false statements to his clients regarding the amount of settlement funds paid to lienholders and the funds remaining. He prepared inaccurate or falsified settlement statements. He failed to pay or underpaid his clients, and he failed to pay medical providers. He overcharged his clients for his costs and expenses. Some disbursements were made from his business account because there weren't sufficient funds in his trust account. There were also insufficient funds in his business account to cover payment. He misappropriated client funds – he paid one client more money than was due, thereby using other client funds or his funds to cover the payment. He failed to keep proper trust account records and did not comply with trust account requirements. He failed to put fee arrangements in writing, filed a frivolous lawsuit, failed to withdraw from representation upon termination, and failed to promptly provide client files to new counsel. He did not respond to disciplinary inquiries and did not file an answer to the disciplinary complaint, resulting in an entry of default. For his conduct, the Arizona Supreme Court found clear and convincing evidence that the attorney violated Rule 42, Ariz. R. Sup. Ct., and ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.15, 1.16, 3.1, 8.4(b), 8.4(c), 5.5, 8.1, and 8.4(d), and Rule 43, most of which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. The Montana Supreme Court, likewise, disbarred the attorney from practicing law in Montana. *In re Daniel T. McCarthy*, MT PR 13-0732 (2013).

Making verbal, abusive and disruptive threats to attorney/conduct prejudicial to administration of justice. Attorney confronted his former client's new counsel at the court clerk's office, at which time he allegedly told her in a raised voice, she'd "better watch her back." The new counsel had filed a petition for post-conviction relief, alleging the attorney's representation was ineffective. After the client subsequently filed an ethics complaint against the attorney for ineffective assistance of counsel, the attorney left new counsel an angry and abusive voicemail message complaining about receiving the complaint and threatening that he was going to get her, he was coming to get her, and she should be prepared because he was going to wipe her out. She feared for her safety. After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, wherein it concluded the attorney violated Rule 8.4(d), MRPC, in his obvious attempt to persuade another attorney to stop pursuing the legal rights of her client using abusive, disruptive and threatening tactics. The COP recommended the attorney be publicly censured, be placed on probation for one year, complete anger management counseling, and pay the costs of the disciplinary proceedings. The Court

accepted and adopted COP's Findings of Fact, Conclusions of Law and Recommendation in its entirety. *In re Jeffrey Michael*, MT PR 12-0671 (2013).

Misrepresentation of role in lawsuit; failure to correct misrepresentation; conflict of interest; obtaining confidential information; failure to return confidential file; failure to promptly withdraw from representation; failure to communicate objective with client; failure to act diligently. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The attorney admitted to the allegations of the Complaint and to violating Rules 1.1, 1.3, 1.4, 1.7, 1.15, 1.16, and 8.4(d), MRPC. Specifically, he admitted he mistakenly believed he and his firm represented the insurance company for one of the defendants in a lawsuit rather than the plaintiff. He contacted and discussed the case with counsel for one of the defendants. He then discussed the case with counsel for the other two defendants, during which confidential information was disclosed. He also requested confidential information, which was provided. Two weeks later, he realized he and his firm represented the insurance company for the plaintiff and not a defendant. Counsel for the two defendants requested the attorney return the confidential information to her. Another four weeks later, the attorney filed a Notice of Appearance for the plaintiff. Opposing counsel subsequently filed a Motion to Dismiss Case or Disqualify Counsel and for Return of Case File and Memorandum in Support. Four months later, the attorney withdrew from the case citing a conflict of interest and paid monetary sanctions imposed by the court. Following a Rule 26 hearing, COP submitted its Recommendation to Approve Rule 26 Tendered Admission to the Montana Supreme Court, which the Court accepted. The Supreme Court ordered the attorney to be publicly censured by the Court, and pay the costs of the disciplinary proceedings. *In re Christian T. Nygren*, MT PR 12-0662 (2013).

False, baseless accusations about presiding judge in pro se post-divorce proceedings. (Reciprocal Discipline) Attorney was suspended by the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts, for a period of one year and a day, pursuant to the report filed by the Board of Bar Overseers. The report concerns the attorney's conduct while representing himself in post-divorce proceedings. The conduct in question involves his numerous disparaging statements concerning the integrity and qualifications of the presiding judge made throughout the proceedings and his filing of a civil complaint against the judge. The Board of Bar Overseers determined the attorney violated Rules 3.1, 8.2, 8.4(d) and (h) of the Massachusetts Rules of Professional Conduct, which are the same as, or equivalent to, the corresponding Montana Rules of Professional Conduct. Subsequently, the Montana Supreme Court ordered the imposition of identical discipline and suspended the attorney for one year and one day. *In re Daniel J. Harrington*, MT PR 12-0746 (2013).

Failure to respond to disciplinary inquiries; failure to appear; and failure to comply with a disciplinary order. Attorney failed to respond to ODC's disciplinary inquiries in three separate informal matters, despite ODC's multiple requests. The attorney failed to appear at a Show Cause hearing before the Commission on Practice, at which he was to show cause why appropriate discipline or sanction should not be imposed for his failures to respond or cooperate. The attorney failed to comply with the discipline imposed in a prior disciplinary order issued by the Montana Supreme Court. ODC filed a formal complaint alleging violations of Rules 8.1(b) and 8.4(d), MRPC, and Rule 8A(6), MRLDE. The attorney failed to file an Answer; therefore,

all allegations of the Complaint were admitted. The COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney be indefinitely suspended for not less than seven months, and pay costs of the disciplinary proceedings for violating Rules 8.1(b), and 8.4(d), MRPC, and Rule 8A(6), MRLDE. *In re Bradley L. Aklestad*, MT PR 11-0601 (2012).

Failure to act competently and diligently; failure to appear at hearings; failure to communicate; improper fees; improper withdrawal from representation; failure to properly train paralegal; conduct is prejudicial to the administration of justice. (Reciprocal Discipline)

The Arizona Supreme Court issued its Final Judgment and Order after reviewing and accepting the attorney's Agreement for Discipline by Consent. According to the Agreement, Respondent admitted his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16, 5.3, and 8.4(d). The discipline and violations were based on the following facts. The attorney represented a bank to assist in collecting on several defaulted notes. He filed several lawsuits but failed to perfect service on some, resulting in dismissal of the lawsuits, and erroneously or improperly certified multiple cases for arbitration. In one case, he certified the claim was for less than \$50,000 and thus, subject to arbitration, even though the note was in excess of \$200,000. In another case, he made crucial errors in pleadings and other legal documents. He failed to appear for two hearings in another matter, resulting in dismissal with prejudice and costs. He then charged the bank for his fees in having the dismissal changed to a dismissal without prejudice. The Judge also required the bank to pay the defendant's costs for the change. In a separate case, the attorney improperly withdrew his representation. Per the Agreement, the attorney consented to being reprimanded for his conduct, placed on probation for a period of one year, subject to early termination upon completion of and payment for "Ethics School," and pay the costs and expenses of the State Bar of Arizona. Presiding Disciplinary Judge O'Neil reviewed and accepted the attorney's Agreement for Discipline by Consent. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), and reprimanded the attorney for his admitted violations of the Arizona Rules of Professional Conduct. The Court did not place him on probation because his Arizona probation had already been terminated as a result of his compliance with the probation terms. *In re Philip M. Kleinsmith*, MT PR 12-0486 (2012).

Failure to appear for discipline conduct prejudicial to administration of justice. Attorney was ordered by the Montana Supreme Court to appear before the Commission to receive discipline. He was timely notified of the time and place to appear. He failed to appear in person or by counsel. The attorney was ordered a second time to appear before the Commission to receive discipline for the same matter. He, again, was timely notified of the time and place to appear and, again, failed to appear in person or by counsel. The ODC filed a formal complaint alleging the attorney's failure to comply with the disciplinary orders to appear is conduct prejudicial to the administration of justice and constitutes grounds for discipline pursuant to Rule 8A(5), RLDE (2002). After a formal hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendation to the Supreme Court wherein it concluded the attorney violated Rule 8.4(d), MRPC. The COP recommended the attorney be indefinitely suspended for a period of not less than seven months and be assessed the costs of the disciplinary proceedings for his violation of his ethical duties. The Court adopted COP's Findings of Fact, Conclusions of Law and Recommendation and indefinitely suspended him for a period of not less than seven months

and ordered him to pay the costs of the disciplinary proceedings. *In re Fausto G. Turrin*, MT PR 10-0410 (2011).

Failure to respond to court order; failure to comply with court order. (Reciprocal Discipline)

The California State Bar filed its Notice of Disciplinary Charges alleging the following. Attorney was appointed by the California Supreme Court as habeas corpus/executive clemency counsel of record for a criminal client. The appointment was approved under a fixed fee progress payment schedule, wherein the Court paid the attorney for her work performed in the case. The Court authorized one payment in the amount of \$39,360, which was transmitted to the attorney. Nearly two years later, it approved a second payment to the attorney in the amount of \$43,560, which was paid. Two months later, the attorney filed a motion to withdraw based on a conflict of interest, but the Court denied her motion. Nearly three months later, she filed a second motion to withdraw based on health reasons, which the Court granted and subsequently ordered the attorney to show cause whether she should be ordered to reimburse the Court the second payment she received. The attorney did not respond to the Court's Order until over a year later and willfully disobeyed a court order by not timely responding or providing an accounting of her habeas corpus work performed in violation of Rules 3.4(c) and 8.4(d), MRPC. She signed a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension, wherein she agreed to a one-year stayed suspension, probation for two years with certain conditions, 90-day actual suspension with certain conditions, and payment of costs. The California Supreme Court approved the Stipulation and its terms, effectively staying a one-year suspension, placing her on probation for two years, suspending her for 90 days, and ordering her to pay costs. The Montana Supreme Court entered reciprocal discipline under Rule 27, MRLDE (2011), suspending the attorney from the practice of law in Montana for a period of 90 days and ordering her to pay costs. *In re Phyllis Moore Quatman*, MT PR 11-0358 (2011).

Failure to act; failure to consult with client and obtain informed consent regarding decision; failure to communicate; lack of diligence; failure to expedite litigation; failure to comply with requirements regarding terminating representation; failure to comply with discovery requests; dishonesty, deceit, misrepresentations and fraud; conduct prejudicial to administration of justice.

Attorney was retained to represent a client in a wrongful discharge case; he filed an Amended Complaint the same day. Several months later, the opposing party moved for partial summary judgment on the wrongful discharge and human rights claims as well as the punitive damages claim. The attorney did not oppose or respond nor did he advise his client of the motions. The motions were granted, and the defendant was awarded attorney fees and costs for defense of the claims. The following day, opposing counsel moved to compel discovery responses on two occasions, including sanctions on one occasion, and moved that the unanswered requests for admission be deemed admitted on two occasions. The attorney failed to oppose, to respond and to advise his client of the motions. At a hearing, the attorney, without consulting his client, stipulated to Judgment against her for the attorney fees and costs requested. The motion for sanctions and to compel was granted. The Court also granted default judgment in favor of the defendant on the client's claims for emotional distress and conversion and awarded attorney fees and costs. The attorney informed his client of the Judgment and falsely represented that it was opposing counsel's fault because he filed certain pleadings when he knew the attorney was on vacation, and, as a result, he failed to appear for the hearing. The attorney assured his client that he would be responsible for the Judgment. Opposing counsel filed claims

for attorney fees and costs totaling nearly \$65,000; the attorney failed to object and failed to appear for a hearing on the claims. The Court awarded the opposing counsel over \$45,000 with interest accruing. The attorney failed to inform his client of the award. The attorney ceased representation of his client without properly withdrawing; he possibly moved overseas. While applying for a loan, the client discovered the Judgment liens that the opposing party filed on her house in excess of \$45,000. She negotiated and settled the Judgments for \$8,750, which she satisfied and the liens were released. The attorney failed to file an Answer to the formal complaint filed by ODC; a default hearing was held before the COP. Following the hearing, the COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court suspended the attorney from the practice of law in Montana for a period of not less than six months, ordered him to pay restitution to his client with interest, and to pay the costs of the disciplinary proceedings for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.16, 3.2, 3.4(d), and 8.4(c) and (d), MRPC. *In re W. Arthur Graham*, MT PR 08-0656 (2009).

Failure to file or timely file and pay or timely pay state and/or federal tax returns. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed. The formal complaint alleged failure to file or timely file state and/or federal tax returns and failure to pay or timely pay state and/or federal tax obligations for various years spanning over a decade. The formal complaint alleged violations of, among others, Rules 8.4(b) and (d), MRPC. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court adopted. The Montana Supreme Court ordered the attorney receive a public censure by the Court, to be placed on probation for a 5-year term, and to pay the costs of the disciplinary proceedings. The terms of probation include: 1) obey all laws and Rules of Professional Conduct; 2) file all state and federal tax returns and pay all taxes when due; 3) provide ODC with requested authorizations for access to information from the IRS, Montana Department of Revenue and his accountants, and, 4) provide ODC with copies of his state and federal income tax returns filed during his probationary period. *In re James P. Molloy*, MT PR 08-0438 (2009).

False statements in disciplinary proceedings. Attorney was contacted by a Louisiana firm to assist in representing two out-of-state clients, who were involved in a motorcycle accident in Montana. The clients entered into a written contingency fee agreement with the Louisiana firm for a 1/3 fee with the firm responsible for litigation costs. The attorney filed the lawsuit and tried the case to verdict in Montana. The jury awarded the clients \$869,990, and the defendants' insurance carrier satisfied the judgment. After he received judgment proceeds, the attorney communicated directly with the clients and distributed to them two-thirds of the judgment proceeds less the litigation costs. The reduction was in conflict with the written contingency fee agreement between the clients and the Louisiana firm. The attorney then paid himself what he perceived to be the uncontested portion of the fees owed to him pursuant to the communications between the firms, plus the litigation costs, and placed the remainder of the attorney fee portion of the judgment in his trust account. The attorney later paid the remaining portion to the District Court as part of an interpleader action he filed. The fee dispute between the Louisiana firm, the attorney and the clients went to litigation resulting in a settlement agreement whereby the attorney and the Louisiana firm received an agreed share of the attorney fees and the clients were reimbursed the litigation costs that the attorney initially disbursed to himself. At the disciplinary

hearing, the attorney and the Louisiana firm disputed the existence and nature of communications between him and the Louisiana firm regarding their fee-splitting arrangement, which was not reduced to writing. The attorney asserted that he had entered into an oral contingency fee agreement with the clients. He also took the position that he did not have any understanding with the Louisiana firm about a division of attorney fees, that he was unaware that the clients had signed a written fee agreement with the Louisiana firm and that the clients had advised him they did not have a fee agreement with the Louisiana firm. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 8.1 and 8.4(d), MRPC, for knowingly making false statements in a disciplinary matter and for engaging in conduct that is prejudicial to the administration of justice by way of his representations to Disciplinary Counsel and the COP about his asserted oral fee agreement with the clients. The Court ordered the attorney to appear before it to receive a public censure and to pay all costs of the disciplinary proceedings. *In re Oaas*, MT PR 07-0241 (2008).

Failure to appear at court hearings. Attorney was hired by eight clients to represent them in various matters. The first client paid the attorney \$800 to represent her in a family law matter. The attorney failed to respond to her inquiries, failed to inform her of the status of her matter, failed to act diligently, failed to complete the work for which he had been retained, abandoned her forcing her to hire another attorney. He failed to return her file and his unearned fees. The second client retained the attorney to represent her in her criminal matter. He failed to appear for two omnibus hearings and two show cause hearings resulting in the court removing him and appointing another attorney to represent his client. The third client paid the attorney \$1,000, plus the \$190 filing fee to represent him in his dissolution matter; however, the client's wife filed a petition first. The attorney failed to file a response and failed to inform his client of the status despite the client's numerous attempts to contact him. After the attorney abandoned him, the client retained another attorney to represent him. The attorney failed to return his unearned fees. The fourth client hired the attorney to pursue a wrongful discharge claim. The attorney failed to respond to his client's numerous phone messages, failed to keep him advised of the status, failed to act diligently in pursuing his matter, and abandoned him. The attorney also failed to return his documents and other items. The fifth client retained the attorney to represent her in her dissolution matter. The attorney failed to keep his client informed about the status of her case despite her numerous attempts to contact him. He failed to act diligently and abandoned his client, resulting in the court removing him as her attorney. The sixth client retained the attorney to represent him in his dissolution matter. The attorney failed to appear at the trial on behalf of his client, who was incarcerated and was not present. The seventh client paid the attorney \$690 to represent him in his dissolution matter and to obtain a quitclaim deed. The attorney failed to complete the work for which he had been retained, failed to respond to his client's numerous phone messages, failed to keep his client informed about the status of his case despite his numerous attempts to contact him, failed to act diligently in pursuing his matter, abandoned him and failed to return his unearned fees. The eighth client paid the attorney \$800 to represent her regarding a parenting plan and child support matters. The attorney failed to complete the work, failed to inform his client of the status despite the client's numerous attempts to contact him, failed to act diligently, failed to protect his client's interests and failed to return his unearned fees. In addition, the attorney failed to respond to ODC's inquiries. The Montana Supreme Court found clear and convincing evidence that the attorney violated Rules 1.1, 1.3, 1.4, 1.16(d),

8.1(b) and 8.4(d), MRPC. The Court disbarred the attorney from the practice of law and be assessed with the costs of the disciplinary proceedings. *In re Wesson*, MT PR 06-0519 (2007).

Failure to appear for Public Censure. Attorney was ordered by the Montana Supreme Court to appear before it to receive a public censure as a result of a reciprocal discipline order. The attorney failed to appear. The Court found the attorney's conduct violated Rule 8.4(d), MRPC, and extended his existing one-year suspension by an additional year. The attorney was also ordered to pay costs of the disciplinary proceedings. *In re Musick*, MT PR 06-0245 (2007).

Practicing law while suspended; failure to inform court and opposing counsel of suspension; failure/refusal to comply with court suspension order. Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Supreme Court, which the Court accepted. According to the Supreme Court's Order, the COP concluded that the attorney violated Rule 5.5, MRPC, because he practiced law while suspended from the practice of law pursuant to an earlier order of the Court; he violated Rules 3.3(a)(2) and 8.4(c), MRPC, by failing to inform an Indiana U.S. Magistrate Judge and Indiana counsel of his suspension from the practice of law by the Montana Supreme Court and for acting deceitfully; and he violated Rule 8.4(d), MRPC, because he failed or refused to comply with or honor the thirty-day suspension order of the Court. The Montana Supreme Court ordered the attorney be indefinitely suspended from the practice of law for a period of not less than seven months. The Court further ordered the attorney pay the costs of the proceedings. *In re Shields*, MT PR 07-0036 (2007). (In 2009, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Failure to appear for discipline conduct prejudicial to administration of justice. The allegations in the Formal Complaint included the following. Attorney was ordered to appear before the Commission to receive discipline. He failed to appear in person or by counsel. The attorney was ordered a second time to appear before the Commission to receive discipline for the same matter and again failed to appear in person or by counsel. According to the Montana Supreme Court's Order, the attorney tendered his *Conditional Admission and Affidavit of Consent* relative to his violation of Rule 8.4(d), MRPC. The COP recommended the attorney's tendered admission be approved. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney receive a public censure by the Court and to pay costs of the disciplinary proceedings. *In re Christensen*, MT PR 07-0109 (2007).

Misrepresentation of facts to bankruptcy court. Attorney tendered a *Conditional Admission and Affidavit of Consent* regarding four separate matters, wherein he admitted violating Rule 8.4(d), MRPC, as well as several other rules. The Montana Supreme Court accepted his admission and suspended the attorney for six months, with three years of probation to follow. The attorney was ordered to reimburse legal fees to a client and the COP and ODC's costs of proceedings. *In re Caughron*, MT 05-100 (2005).

Failure to comply with court order prejudicial to administration of justice. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting she violated Rule 8.4(d), MRPC, as well as other rules. The Montana Supreme Court accepted the attorney's admission

and publicly censured her. She was also required to pay COP and ODC's costs of proceedings. *In re German*, MT 05-360 (2005).

Failure to promptly withdraw (Reciprocal discipline). Attorney was disciplined by the Ethics and Discipline Committee of the Utah Supreme Court which provided ODC with copies of the relevant documents. The attorney was hired by the client to represent her in a real estate contract dispute. He failed to file a final order, which would have permitted his client to enforce the order of the court or dismiss any appeals made in her contract dispute. The attorney was publicly reprimanded in Utah. Subsequently, the Montana Supreme Court ordered imposition of identical discipline and publicly censured the attorney for violations of several rules. *In re Musick*, MT 05-558 (2005).

Attorney submitted a *Conditional Admission and Affidavit of Consent* to the COP after a formal complaint was filed regarding three different matters. The formal complaint alleged violations of Rules 1.7, 1.11 and 8.4(d), MRPC, for the following. The attorney defended a client in a civil case filed by his landlord in Justice Court, which involved, among other things, back rent. The client was charged criminally with issuing bad checks to his landlord prior to the filing of the civil case; the attorney did not defend the client in the criminal matter. The attorney was sworn in as part-time County Attorney shortly after he began representing his client in the civil matter; he continued his representation after he became County Attorney. While representing the client in the civil case, the attorney on behalf of the State of Montana, filed a Motion to Dismiss the criminal charges against his current client. In a separate matter, prior to the time he became County Attorney, the attorney defended another client charged with DUI. The client signed a plea agreement and received a suspended sentence for Negligent Endangerment. A condition of his suspended sentence was to stay out of bars and to not drink alcohol. After the Montana Supreme Court issued an Opinion in another matter wherein it ruled that conditions of probation must correlate with the underlying offense, the client filed a *pro se* motion to remove the condition. As County Attorney and on behalf of the State, the attorney filed in his former client's case a Motion to Amend Plea Agreement referencing his former client and others, seeking to remove the condition from all plea agreements containing such a condition. The motion was denied. In the final matter, after he became the full-time County Attorney, the attorney continued to represent criminal defendants in another County. The COP submitted its Findings of Fact, Conclusions of Law and Recommendations to the Montana Supreme Court, which the Court adopted. The Court ordered the attorney to receive a public censure administered by the Court, to be placed on probation for a period of two years, commencing May 20, 2009, and to pay all costs of the disciplinary proceedings for violations of Rules 1.7, 1.11 and 8.4(d), MRPC. The conditions of probation include: 1) obey all laws and Montana Rules of Professional Conduct; 2) not seek re-election as County Attorney, and, 3) resign his position as County Attorney effective January 1, 2010. *In re Mark E. Jones*, MT PR 08-0216 (2009).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.2, 3.4, 3.5, and 8.4(d) in exchange for public censure and an assessment of expenses and costs of the proceedings. The Montana Supreme Court accepted the attorney's tendered admission. The Court ordered that the attorney be publicly censured by the Supreme Court of the State of Montana and be assessed with costs of the proceedings. *In re Truman*, MT PR 06-0525 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 1.1, 1.3, 1.4, 3.2, 3.4, 8.1, 8.1(b), and 8.4(d) and to other violations set forth in the two formal complaints filed by the COP. The Montana Supreme Court accepted the attorney's tendered admission. The Montana Supreme Court ordered the attorney be disciplined with suspension from the practice of law for six months, and following suspension, three years of probation and payment of costs of the disciplinary proceedings. The Court further ordered that during probation the attorney continue with prescribed medical treatment and maintain his law practice at a manageable level. The Court further required that the attorney file quarterly written reports with the ODC during the first year of probation and file semi-annual reports with the ODC for the final two years of probation denoting his adherence to the treatment program and disclosing any current or potential issues of attorney misconduct. The Court also ordered the attorney to consult regularly with a mentor approved by COP. *In re Harrington*, MT 05-096, and MT 05-591 (2006).

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 3.4(b), 4.1(a), 8.4(c), and 8.4(d). The Montana Supreme Court accepted the attorney's tendered admission and ordered that the attorney be disciplined with public censure, a 30-day suspension from practice, two years of probation, and an assessment of the costs of the disciplinary proceedings. *In re D'Alton*, MT PR 06-0235 (2006).

Ignoring deadlines ordered by the Court. Attorney was hired or appointed to represent several clients in their appeals of criminal convictions. He regularly ignored deadlines established by Supreme Court Orders during his clients' appeals. One case was remanded by the Supreme Court for an appointment of substitute counsel because of the attorney's failure to appear. The attorney tendered a *Conditional Admission and Affidavit of Consent* admitting the violations set forth in the formal complaint, including Rule 8.4(d), MRPC, and other violations from a pending informal matter with the ODC. He further acknowledged he was unable to successfully defend himself against the allegations made against him. The State Bar of Montana had previously suspended the attorney's license to practice law, pursuant to their by-laws, for non-payment of dues. The Montana Supreme Court accepted the attorney's admission, transferred him to disability/inactive status for not less than six months, and deferred the adjudication of a pending ODC action until his return to active status. The Court further ordered the attorney to pay the COP and ODC's costs of proceedings. *In re Wilcox*, MT 04-326 (2005).

Missing deadlines/failure to comply with court orders/contempt. The attorney admitted her misconduct pursuant to a Rule 26, MRLDE, tendered admission. The attorney admitted violating several rules of professional conduct, including Rule 8.4(d), MRPC, in the course of her representation of a criminal defendant. The attorney repeatedly failed to comply with orders of the District Court setting deadlines and failed to prosecute her client's appeal in a reasonably diligent fashion. The attorney's misconduct was severe enough for the district judge to hold her in contempt and new counsel had to be hired to complete the case. The Commission on Practice reviewed the attorney's tendered admission and recommended acceptance to the Montana Supreme Court. The Court accepted the admission, suspended the attorney for six months and publicly censured the attorney. *In re Drew*, MT 04-417 (2004).

Filing improper motions to disqualify. (Reciprocal Discipline) Attorney admitted to violating Wyoming Rule of Professional Conduct 8.4(d) by filing motions to disqualify the court and opposing counsel that were not proper in that they contained inappropriate comments about the court and the opposing counsel. The Montana Supreme Court entered reciprocal discipline under RLDE 27 (2003) of a public reprimand for this and another violation. *In re Elworthy*, MT 04-284.

Suspended attorney appeared telephonically and self-identified as “representing” party; judgment subsequently reversed. The attorney admitted violating several rules of professional conduct pursuant to a Rule 26 tendered admission. The Montana Supreme Court had previously suspended the attorney from the practice of law for previous misconduct. The attorney’s former law partner hired the suspended attorney to work as a paralegal. The suspended attorney was directed to request a continuance in a matter. Instead, he appeared at a telephonic hearing, stated his name and described himself as representing a party. The suspended attorney moved the court for summary judgment, which was granted. The court later determined the attorney was suspended and set aside the judgment. The attorney admitted his conduct violated Rule 8.4(d), MRPC. The Commission on Practice reviewed the attorney’s admission and recommended approval to the Montana Supreme Court. The Court accepted the recommendation and suspended the attorney for not less than three years for this and other misconduct. *In re Hussey*, MT 03-735 (2004).

Failure to hold client funds separate from attorney funds; failure to supervise employee. The attorney, pursuant to a Rule 26, MRLDE, tendered admission, admitted the following: The attorney employed a secretary/paralegal for approximately 4 years who embezzled several hundred thousand dollars from estates represented by the attorney. The secretary wrote herself and her creditors checks on the law firm account and forged the attorney’s signature. The attorney had access to all bank records, client files, bank statements and client accounts during the period of employment. In addition, client funds were also commingled with and used for general office purposes. Business records showed the attorney’s office accounts would have operated in the negative from time to time but for unearned client funds and embezzled money in the office accounts. Despite having access to the pertinent records, the attorney failed to observe his employee’s activities or properly monitor the client accounts. The attorney admitted violating numerous rules of professional conduct as a result of these events, including Rule 8.4(d), MRPC, by engaging in conduct deemed to be prejudicial to the administration of justice. The Montana Supreme Court accepted the attorney’s admission and indefinitely suspended the attorney for not less than 18 months and ordered the attorney to pay restitution to his clients. *In re McGee*, MT 03-723 (2004).

Practicing law while suspended. The client hired the attorney to represent her in a dispute with the executor of an estate from which she stood to inherit. The attorney accepted a retainer, but then missed a hearing and failed to file a motion to remove the current executor. When the client called the attorney to ask why he had missed the hearing, he said he was not notified about it and promised to consult with opposing counsel and call her back. He never did so. The attorney also failed to consult with his client about his decision not to file the motion on her behalf. The Commission on Practice concluded the attorney violated Rules 1.1, 1.3 and 1.4, MRPC, for his misconduct. The Montana Supreme Court suspended the attorney for a period of not less than a

year for this and other conduct violative of the MRPC. *In re Wing*, MT 03-585 (2004). The Court subsequently found the attorney in contempt of court because he continued to practice law after he had been suspended, in violation of Rules 3.4(c), 5.5(a)(1), and 8.4(c) and (d), MRPC. After a formal complaint was filed, the attorney tendered his admission pursuant to Rule 26, MRLDE, for violating these rules and Rule 8.1 for failing to respond to disciplinary inquiries. The Commission recommended the Court adopt the attorney's tendered admission. The Court adopted the tendered admission and placed the attorney on probation for five years, subject to certain terms and conditions, including, but not limited to, resignation of his law license. *In re Wing*, MT 03-585 and MT 04-872 (2005).

Failure to order a transcript when client filed appeal/failure to request attorney be relieved. Court appointed attorney to represent a felon starting at his sentencing hearing. Upon the attorney's initial meeting with the client, problems arose and the attorney ceased her communications with him. The client filed an appeal, but the attorney failed to order a transcript for the appeal in a timely manner. The attorney also failed to diligently pursue the appointment of another lawyer to replace her after the client fired her. Pursuant to a Rule 26, MRLDE, tendered admission, the attorney admitted violating Rule 8.4(d), MRPC, as well as other rules of professional conduct. The Commission on Practice reviewed the tendered admission and recommended approval to the Montana Supreme Court. The Court approved the admission and suspended the attorney for 30 days. *In re Ferguson*, MT 03-114 (2004).

Allegations that judge destroyed documents or evidence. Attorney made repeated and, apparently baseless, accusations that a state district court judge destroyed evidence and court documents, received "kick-backs" from the attorney's ex-wife in exchange for the judge's ruling in her favor during the divorce proceedings and "fixed" an ethics complaint against the attorney who represented his ex-wife. The Commission on Practice found the attorney's actions violated several of the Montana Rules of Professional Conduct, including Rule 8.4(d), MRPC. The Montana Supreme Court adopted the findings of the Commission and indefinitely suspended the attorney for a period of not less than two years. *In re Nascimento*, MT 02-778 (2004).

Misleading statements regarding the status of the representation. The attorney submitted a tendered admission to a violation of Rule 8.4(a), (c) and (d), MRPC, by making false and misleading statements to his client about his work on the matter and the status of the matter, as well as other violations. The Commission recommended approval of the tendered admission. The Court adopted the admission and placed the attorney on probation for a twelve-month period. *In re Wing*, MT 03-389 (2003).

Breaching terms of a plea agreement, requiring additional sentencing hearings. A criminal defendant entered into a plea agreement with the state, which was represented by the attorney that was the subject of this disciplinary proceeding. The attorney first recommended a longer sentence that provided for in the agreement (See *State v. Rardon*, 1999 MT 220, 296 Mont. 19, 986 P.2d 424), requiring a remand. The attorney next offered evidence to cause the court to question the appropriateness of the recommended sentence, thereby causing the court to hold two more sentencing hearings. The Supreme Court called the attorney's conduct "overzealous." The attorney's conduct required two hearings before the Montana Supreme Court, three sentencing hearings before three district court judges and ultimately required a different attorney to

prosecute the case. The attorney admitted violating Rule 8.4(d), MRPC, pursuant to a Rule 26, MRLDE, tendered admission. The Commission on Practice reviewed the admission and recommended approval to the Montana Supreme Court. The Court accepted the admission and publicly censured the attorney. *In re Corrigan*, MT 03-822 (2003).

Failing to file income tax returns. Attorney entered into a plea agreement with the federal government, in which he admitted failing to file his federal income tax returns for 1992-1996. The attorney argued that he entered the plea agreement only after coercion exercised by the federal government. The Commission on Practice and the Montana Supreme Court determined the attorney's admissions provided clear and convincing evidence that Rule 8.4(d), MRPC, had been violated. The Court ordered that the attorney be publicly censured for his misconduct. *In re Wallace*, MT 00-582 (2001).

Failure to comply with discovery order. An attorney was sued for conduct unrelated to the practice of law. As part of the lawsuit, the plaintiffs filed discovery requests in November 1997. When no responses were forthcoming, the plaintiffs turned to the Court and prevailed on a motion to compel in February 1998, at which time the district court also awarded sanctions against the attorney. In May, still having not responded and ignoring a court order, an entry of default was entered against the attorney. The Commission on Practice found the attorney's conduct in failing to respond to discovery requests was prejudicial to the administration of justice and constituted a violation of Rule 8.4(d), MRPC. The Montana Supreme Court adopted the findings of the Commission and suspended the attorney for not less than seven months for this and the 8.4(c) violation. *In re Hussey*, MT 00-162 (2001).

Interference with officers serving a search warrant/use of offensive language during course of search. During a search of a business owned by the brother of the attorney by agents from the Medicaid Fraud Unit, the attorney physically interfered with the agents and used a "barrage of profane language towards the agents." The attorney attempted to grab a file drawer from one agent and physically blocked another agent's passage through a doorway. The attorney also grabbed the search inventory out of an agent's hands and held it behind his back until a different agent snatched it from the attorney. The attorney admitted his misconduct and violation of Rule 8.4(d), MRPC. The Montana Supreme Court publicly censured the attorney and ordered him to complete an anger management course. *In re Vanio*, MT 99-559 (2000).

Failure to file income tax returns is prejudicial to the administration of justice. Attorney self-reported his misdemeanor conviction for failing to file federal income tax returns. The Commission on Practice determined there was insufficient evidence to prove the conduct reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer, or that the conduct involved dishonesty, fraud, deceit or misrepresentation. The attorney did file requests for extensions with the Internal Revenue Service, but never filed the returns. Accordingly, the Commission did not find violations of Rules 8.4(b) and (c), MRPC. However, the Commission did conclude the attorney's conduct was prejudicial to the administration of justice and found a violation of Rule 8.4(d), MRPC. The Montana Supreme Court publicly censured the attorney for the misconduct. *In re Paskell*, MT 99-267 (2000).

False accusation of bias made within 30 days of trial in publicized case. An attorney representing a defendant in a publicized homicide case was unhappy with a discovery order contended to be prejudicial to his client. The attorney accused the judge of bias shortly before the trial was to begin, in an attempt to disqualify the judge. A hearing was held at which it was determined that the judge had acted properly. The Commission chastised the attorney for his conduct, writing he “should have used a scalpel, not a meat axe” in his reaction to the judge’s ruling and made an objection in writing. The Montana Supreme Court adopted the Commission findings that found the attorney violated Rule 8.4(d), MRPC, in that the allegations of bias were made “for purposes of objecting to what was a ‘routine procedure’ respecting procedural matters otherwise remedied.” It found that the only purpose for the allegations on the eve of trial was to delay the case. The Court publicly censured the attorney for this and other violations. *In re Albers*, 98-011 (2000). The Montana Supreme Court rejected the attorney’s constitutional challenges to the disciplinary process. *In the Matter of Goldstein and Albers*, 2000 MT 8.

Misrepresentation to the court. The Attorney represented one party in a domestic dissolution. The other party was not represented. The former spouses executed a settlement agreement in October 1993. In February 1994, the parties met with the attorney again and discussed a modification to the settlement agreement. The unrepresented party signed the modification prepared by the attorney, but the client did not. The attorney told the unrepresented party that the modified agreement would be presented to the court. Four days later, the attorney appeared before the court and presented the October 1993 agreement without mentioning the modified version and represented the 1993 agreement was the full and final settlement of all issues. The unrepresented party was not present at the hearing. The court later determined what had happened and held the attorney in contempt. The Commission on Practice found the attorney’s conduct to violate Rule 8.4(d), MRPC, and other rules of conduct. The Montana Supreme Court adopted the findings of the Commission and disbarred the attorney for this and other misconduct. *In re Kehew*, MT 96-442/443 (1997). (In 2007, the Montana Supreme Court denied the attorney’s petition for reinstatement.)

Attorney practiced while suspended for not filing CLE affidavit. The Montana Supreme Court issued to the attorney an order to show cause why his name should not be dropped from the rolls of practicing attorneys for failure to comply with CLE requirements. The attorney did not respond and his name was struck from the rolls. Starting a week after the court took that action, the attorney prepared and filed documents in a variety of cases until a court clerk refused his documents because of the status of his license. The attorney then filed the required affidavit. The Montana Board of Continuing Legal Education then sent the Supreme Court a letter to the effect that the attorney had complied with his CLE requirements. The Court ordered that the attorney would be reinstated to practice as soon as he paid his attorney license tax and state bar dues. The attorney continued to do legal work until another court clerk refused his documents. The attorney then complied and filed a petition for reinstatement, which was granted. The Commission on Practice determined the attorney had practiced law while suspended, a violation of Rule 7, MRLDE, and Rules 8.4(c) and (d), MRPC. The Montana Supreme Court adopted the Commission’s findings and indefinitely suspended the attorney for not less than six months. *In re Quinlan*, MT 94-161 (1996).

Failure to cooperate with an investigation conducted by the Commission on Practice. The Commission sent the attorney a letter and copies of complaints filed against him. The attorney sent a letter back to the Commission requesting additional time to answer the complaints. Months later, still having heard no response from the attorney, the Commission sent another letter to the attorney, advising him he had not responded and reminding him of Rule 7, MRLDE. Despite the second letter from the Commission, no answer was forthcoming. The Commission found a violation of Rule 8.4(d), MRPC. The Montana Supreme Court suspended the attorney for not less than one year for this and other violations of the MRPC. *In re Pratt*, MT 93-164 (1994). (In 1996, the Montana Supreme Court granted the attorney's petition for reinstatement.)

Attorney's misconduct was prejudicial to the administration of justice. Attorney was hired to represent homeowners in a construction dispute with their contractor. Attorney accepted service of a complaint filed against his clients but failed to notify the clients or file an answer. When a default judgment was entered against his client, the attorney failed to convince the court to set aside the default and mishandled an appeal to the Montana Supreme Court. Homeowners avoided having their home sold at a sheriff's auction by hiring a different attorney. The attorney was hired in a separate matter to represent a client who purchased property encumbered by liens at an auction despite representations to the contrary by the sellers. The attorney was hired in 1988 and told them a federal judge would hear the case in 1990, when no complaint had ever actually been filed on their behalf. The Commission on Practice and Montana Supreme Court found a violation of Montana Rules of Professional Conduct Rule 8.4(d) for engaging in conduct that was prejudicial to the administration of justice. The attorney was suspended indefinitely from the practice of law for this and other violations of the Montana Rules of Professional Conduct (MPC). *In re Johnstone*, MT 92-279 (1993).

8.4(e) and (f):

(No annotations are available relating to violations of Rules 8.4(e) and (f), MRPC.)

RULE 8.5: JURISDICTION AND CERTIFICATION

(a) Disciplinary Authority. A lawyer admitted to practice in this State is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that:

- (1) involves the practice of law in this State by that lawyer;
- (2) involves that lawyer holding himself or herself out as practicing law in this State;
- (3) advertises, solicits, or offers legal services in this State; or
- (4) involves the practice of law in this State by another lawyer over whom that lawyer has the obligation of supervision or control.

(b) Certification. A lawyer who is not an active member in good standing of the State Bar of Montana and who seeks to practice in any state or federal court located in this State pro hac vice, by motion, or before being otherwise admitted to the practice of law in this State, shall, prior to engaging in the practice of law in this State, certify in writing and under oath to this Court that, except as to Rules 6.1 through 6.4, he or she will be bound by these Rules of Professional Conduct in his or her practice of law in this State and will be subject to the disciplinary authority of this State. A copy of said certification shall be mailed, contemporaneously, to the business offices of the State Bar of Montana in Helena, Montana.

(c) Choice of Law. In any exercise of the disciplinary authority of this State and jurisdiction, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal, the rules of the state and jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
- (2) for any other conduct, the rules of the state and jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different state and jurisdiction, the rules of that state and jurisdiction shall be applied to the conduct.

A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

In a *Conditional Admission and Affidavit of Consent*, the attorney admitted to violations of MRPC Rules 8.5, 8.1(b), and 3.3(d) and to other allegations set forth in the formal complaint filed against him by the COP. The Montana Supreme Court accepted the attorney's tendered admission and ordered the attorney disciplined through public censure by the Montana Supreme Court, prohibition from seeking admission to the State Bar of Montana for one year, and assessment of costs of the proceedings expended by ODC and COP. *In re Neidhardt*, MT 05-476 (2006).