

ORIGINAL

FILED

11/29/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: PR 16-0715

1 Shaun R. Thompson
2 Chief Disciplinary Counsel
3 P.O. Box 1099
4 Helena, MT 59624-1099
5 Tele.: (406) 442-1648
6 srthompson@montanaodc.org
7
8 Office of Disciplinary Counsel

FILED

NOV 29 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

PR-16-0715

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

12 IN THE MATTER OF RICHARD M. LAYNE,
13 An Attorney at Law,
14 Respondent.

} Supreme Court Case No. _____
} ODC File No. 16-074
} **COMPLAINT**

17 The Office of Disciplinary Counsel for the State of Montana ("ODC")
18 hereby charges Richard M. Layne with professional misconduct as follows:

19 Count One

20
21 1. Richard M. Layne, hereinafter referred to as Respondent, is an
22 attorney admitted to practice law in Oregon and Washington. Respondent's
23 principal place of business is in Oregon.

24 //

1 2. Billie Redding (“Redding”) is an elderly Montanan who sold her
2 family ranch in 2004 and was advised by her accountants, Anderson ZurMuehlen
3 & Co., P.C. (“AZ”), to invest the proceeds in a company that went bankrupt in
4 2008.

5
6 3. Respondent entered into a contingency fee agreement with
7 Redding to pursue her claims against AZ. Redding’s claims arose from AZ’s
8 alleged misconduct in advising her to obtain tenancy-in-common (“TIC”) shares of
9 properties owned by DBSI, Inc. (“DBSI”). Redding incurred significant financial
10 damages when DBSI became insolvent. AZ similarly advised at least six other
11 clients.
12

13 4. Respondent entered into an agreement with Montana attorney
14 Linda Deola (“Deola”) to have Deola assist him in pursuing Redding’s claims in
15 Montana and to share attorney fees.
16

17 5. On July 27, 2009, Deola filed a lawsuit on Redding’s behalf
18 against AZ and others in Montana First Judicial District Court, Lewis and Clark
19 County, Cause No. ADV 09-649.
20

21 6. In 2009, Respondent submitted a *pro hac vice* application to the
22 State Bar of Montana. Respondent appeared *pro hac vice* in Redding’s case,
23 although he was not formally admitted by the Court. As a result, Respondent was
24

25 //

1 required to abide by the Montana Rules of Professional Conduct and is subject to
2 the disciplinary jurisdiction of the Montana Supreme Court.

3 7. After the lawsuit was filed, Deola acquired five other clients who
4 also had claims against AZ. Deola was the sole attorney for each of her other five
5 clients. Since Respondent and Deola agreed to share any contingent fee in
6 Redding's case, Deola's prospective contingent fee, based on percentage, in her
7 newer five clients' cases was higher.
8

9 8. Deola filed lawsuits against AZ on behalf of her five newer clients
10 alleging damages relating to their TIC investments.
11

12 9. New York Marine and General Insurance Company ("NYM") is an
13 insurance carrier that issued professional liability insurance policies to AZ. There
14 were two applicable claims-made policies, each with policy limits of \$2,000,000.
15

16 10. The aggregate amount of the claims of Deola's clients exceeded
17 the available insurance proceeds.
18

19 11. Six claims were asserted against AZ by seven claimants alleging
20 damages relating to their TIC investments. All but one of the seven claimants were
21 represented by Deola. The other claimant was represented by attorney John
22 Bloomquist.
23

24 12. In June 2012, the seven claimants reached a global settlement with
25 AZ. Pursuant to the settlement agreement, NYM contributed \$2 million from each

1 of two insurance policy periods (2008 and 2010) and AZ agreed to pay an
2 additional \$650,000 over a number of years, for a total settlement of \$4.65 million.

3 13. The aggregate amount of the claims of Deola's clients exceeded
4 \$4.65 million.

5
6 14. The settlement funds were distributed to the various claimants
7 based on each claimant's *pro rata* share of the total amount invested. Redding's
8 share was \$681,696.96 before paying attorney fees and costs of \$227,209.59 and
9 \$3,642.30, respectively.

10
11 15. In violation of Rule 1.7, MRPC, there was a significant risk that
12 Deola's simultaneous representation of her six clients would be materially limited
13 by Deola's responsibilities to each client and by Respondent's personal interests.

14
15 16. On information and belief, Redding did not give informed consent
16 to Deola's representation of other clients.

17
18 17. Deola did not secure a signed document from each of her clients
19 expressing consent to the conflict of interest. In any event, Deola's conflict of
20 interest was not waivable.

21
22 18. In violation of Rule 1.8(g), Deola participated in making an
23 aggregate settlement of the claims of multiple clients without each client giving
24 informed consent, in a writing signed by the client.

25 //

