

No. 19-

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IN THE  
**Supreme Court of the United States**

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IN THE MATTER OF TINA L. MORIN,  
AN ATTORNEY AT LAW

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TINA MORIN,

*Petitioner,*

*v.*

MONTANA OFFICE OF DISCIPLINARY COUNSEL,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF MONTANA**

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**SUPPLEMENTAL BRIEF**

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

Supreme Court No. PR 17-0448

ODC File No. 16-154

IN THE MATTER OF TINA L. MORIN,  
AN ATTORNEY AT LAW,

*Respondent.*

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATION FOR DISCIPLINE**

Hearing on the *Complaint* filed in this matter by the Office of Disciplinary Counsel (“ODC”) came before an Adjudicatory Panel of the Commission on Practice on December 3, 2018 in Helena, Montana. The hearing concluded December 4, 2018. Members of the Panel present and hearing the matter were Ward “Mick” Taleff, chair, Jean Faure, Brad Belke, Michael Black, Pat DeVries, Lori Maloney, Lois Menzies, Dan O’Brien, Randy Ogle and Heather Perry. The ODC was represented by Deputy Disciplinary Counsel Jon Moog. Ms. Morin was present and was represented by Michael Sherwood.

**Introduction.**

This disciplinary matter stems from Tina Morin’s representation of Ron Lowney in appellate and post-remand matters in his wife Judy’s guardianship proceedings. Morin was Ron’s fourth attorney in connection

with the guardianship and accepted representation after the guardianship was filed, guardians and an attorney had been appointed for Judy, and orders regarding visitation and fees had been entered. The purpose of Morin's representation was to obtain expanded visitation rights for her client, to challenge the orders by which Ron was not appointed as Judy's guardian, and to challenge the award of spousal support and attorney fees.

In the guardianship proceedings, attorney Debbie Churchill was appointed as Judy's attorney, "with the powers and duties of a guardian *ad litem*" ("GAL"). Attorney Steve Shapiro represented both the initial and then the successor court-appointed guardians.

The district court's orders were affirmed on appeal<sup>1</sup>, after which Morin filed a succession of pleadings in the district court and in the Montana Supreme Court that primarily addressed the visitation issue. Each of her motions or petitions was denied.

The ethical violations alleged by the Office of Disciplinary Counsel in the *Complaint* essentially relate to Morin's conduct following remand in seeking surrogates to achieve what she had been unable to accomplish. She contacted a disability rights organization for its assistance and arranged for attorney Genet McCann to contact Judy Lowney for purposes of representation, without disclosing to either McCann or the organization Churchill's

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1. A more detailed factual and procedural history of the guardianship proceedings can be found in the Montana Supreme Court decision "In the Matter of J.A.L.", reported at 2014 MT 196, 376 Mont. 18, 329 P.3d 1273.

appointment. McCann's contact was also without the knowledge or consent of Churchill, the guardians' counsel or the court. Further, at Morin's direction, McCann subsequently met with Judy, again without the knowledge or consent of Churchill, the guardians' counsel or the district court.

Significantly, when Morin arranged for McCann to associate with the disability rights organization to represent Judy, neither she nor McCann disclosed the fact that McCann had already entered into an attorney-client agreement with Ron in which Morin was to be the sole point of communication between McCann and Ron.

The *Complaint* alleges Morin breached her ethical duties by communicating about the subject of a representation with a person she knew to be represented by another attorney in the matter without the consent of the other attorney or authorization by law or a court order, knowingly assisting or inducing McCann to violate the Rules of Professional Conduct, and engaging in conduct prejudicial to the administration of justice.

Morin denied all material allegations of the *Complaint* and contended Churchill had only been appointed as GAL, not as an attorney. Morin also claimed that once the permanent guardians were appointed, Churchill's appointment as GAL terminated as a matter of law. In addition, she asserted Churchill had not been properly appointed in that she was not affiliated with the Public Defender's Office.<sup>2</sup> Morin denied she had control over or an agency relationship with McCann.

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2. As noted in the Findings, this argument or defense by Morin was first raised in defense of ODC's Complaint.

Based on those positions, the issues before the Commission were:

1. Whether Churchill represented Judy Lowney as an attorney in the guardianship proceedings;
2. Whether Morin knew Churchill represented Judy Lowney in the guardianship proceeding as an attorney;
3. Whether McCann was acting as Morin's agent or surrogate in contacting Judy Lowney without necessary consent or a judicial order; and
4. Whether Morin aided or induced McCann to violate the M.R.P.C.

In pre-hearing orders, the Commission held that the parties would not be allowed to re-litigate issues that had been decided in the district court, the Supreme Court, or to collaterally attack the record in those courts.

Based upon the testimony and evidence admitted in the hearing, the Commission enters its factual findings, conclusions of law and recommendation for discipline.

## **FINDINGS OF FACT**

1. Tina L. Morin ("Morin") was admitted to the practice of law in the State of Montana in 1992, at which time she took the oath required for admission and agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality,

including but not limited to those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated, then in effect and as thereafter amended.

2. The Montana Supreme Court has approved and adopted the Montana Rules of Professional Conduct (“MRPC”) that govern the ethical conduct of attorneys licensed to practice in Montana. The MRPC were in effect at all times relevant herein.

3. On May 19, 2011, a guardianship petition was filed in Butte-Silver Bow County District Court concerning Judy Lowney (“Judy”). The matter was styled “In the Matter of Judith A. Lowney, An Incapacitated Person, Cause No. DG-11-15” (“the Guardianship Proceeding”). The Honorable Kurt Krueger was the presiding judge.

4. Judge Krueger appointed attorney Debbie M. Churchill (“Churchill”) as Judy’s attorney in the Guardianship Proceeding, “and with the powers of a guardian *ad litem*”. *Order Appointing Attorney to Represent An Alleged Incapacitated Person* filed June 9, 2011, Ex. 2. There has been no order entered modifying that order, releasing or discharging Churchill, and the Guardianship Proceeding remains open.

5. In the Guardianship Proceeding, Judy was judicially determined to be incapacitated. She suffers from dementia and multiple sclerosis. Due to his own mental and other issues, Ron was deemed not suitable to be his wife’s guardian. The court initially appointed Judy’s adult children from a prior marriage as permanent full guardians and conservators on July 15, 2011. They were subsequently replaced by Judy’s brother and sister-in-law,

Robert and Debbie Bugni, as permanent guardians (“the Guardians”) on September 24, 2013. Ex. 5. Letters issued October 22, 2013. Ex. 8.

6. Attorney Steven Shapiro (“Shapiro”) represented the initial guardians and has represented the Guardians on a *pro bono* basis since their appointment in 2013.

7. In November 2012, Churchill moved for approval and allowance of her attorney fees. Ex. 1. She supported the motion with an affidavit and lodged a proposed order. *Id.*

8. In May 2013, the initial guardians also moved for an award of attorney fees. *Id.*

9. In September 2013, Churchill filed a subsequent request for an award of attorney fees and again supported it, this time with two affidavits. *Id.* Ron, through his then attorney of record, opposed the attorney fee requests. *Id.*

10. On October 21, 2013 the district court entered its order on attorney fees. *Id.* Ex. 7. The court awarded Churchill legal fees in the amount of \$20,328.68 against Ron for her representation of Judy. The order expressly indicates “The Churchill law firm was appointed by the Court to represent Judith Ann Lowney.” *Id.*

11. On November 13, 2013, Morin began representing Judy’s husband, Ronald Lowney (“Ron”), as an interested party in the Guardianship Proceedings. Ex. 9. Ron had previously been represented by three separate attorneys and participated in the Guardianship Proceeding, although the testimony and record are not entirely clear

which attorney preceding Morin represented him at specific times in the proceedings. See Ex. 1.

12. Morin was retained by Ron to pursue appellate and post-judgment relief consistent with his interest in expanded, unsupervised visitation with Judy. The Bognis had placed Judy in an assisted living center near their home in Helena, Montana to better enable them to perform their duties and Judge Krueger had limited Ron's visitation to once a month, if practical, on a supervised basis.

13. On November 18, 2013, Morin filed a notice of appeal from Judge Krueger's final orders appointing the Guardians, awarding spousal support, awarding Churchill and Shapiro attorneys' fees, and imposing visitation restrictions on Ron. The appeal was docketed in the Montana Supreme Court as DA 13-0767 and styled "In the Matter of: J.A.L, An Incapacitated Person."

14. In the briefs filed on appeal, including Morin's opening and reply briefs, Churchill is identified as Judy's attorney in the "Appearances of Counsel" section as well as in the certificates of service. Ex. 84, Ex. 85.

15. In Morin's opening brief, she identified two issues on appeal germane to the current proceedings: whether the District Court erred by not following the statutory procedure for guardianship proceedings; and whether the District Court abused its discretion in awarding attorney fees.<sup>3</sup> Ex. 84. Her argument on the first issue was not

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3. Morin's appellate brief also argued that *Judy's* due process rights were violated. She lost that issue on appeal and in subsequent

that Churchill had been appointed only as GAL or that Churchill was disqualified from acting as an attorney. Instead, her argument was based on supposed due process failures affecting Judy and challenges to the testimony at the hearing. *Id.* Her argument on the second issue was that Ron should not be held responsible for attorney fees because his positions were not frivolous. *Id.* Neither position is consistent with the arguments she advanced in defense of the ODC's charges.

16. Morin's appellate briefs clearly demonstrate that she recognized Churchill as Judy's attorney and did so long after the Bognis had been appointed permanent guardians. No part of her appellate briefs contends Churchill was not acting as an attorney and she did not challenge the award of attorney fees on the basis Churchill was only acting as a GAL. At best, her briefs contend only that Ron should not be required to pay the fees "for the guardian ad litem." She did not address at all the fact that the award of fees to Churchill was based on her application for attorney fees. Her argument was that the guardianship estate, rather than Ron, should be responsible for the *attorney* fees and his positions were not so frivolous as to justify a fee award.

In addition to the fact Morin recognized Churchill as counsel for Judy by naming her as an attorney in the appeal notice, on the cover page of each brief identifying counsel, and in the certificates of service, Morin's appellate brief itself acknowledged the district court had appointed Churchill as counsel for Judy. Morin testified that she

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motions, yet has continued to argue that position, even in these proceedings and despite the fact that Judy is not her client.

merely included Churchill as attorney for Judy in the briefs because Churchill was on the prior pleadings (including the order appointing her) and because she had not reviewed the district court file before filing the appeal notice or writing the briefs, Churchill's inclusion was without a conscious effort to understand their attorneys' respective roles. Such testimony is self-serving and not credible in view of the record. Her appellate briefs reflect references to the district court record as the M.R.App.P. require. Further, the public record evidences the fact that she ordered transcripts of the hearings held on September 4, 2013 and on October 2, 2013. Her briefs reference events during those hearings and also reference reports that were part of the record.

17. In her defense of the ethical charges raised in these proceedings, Morin attempted to assert that the appointment of Churchill was improper based on a statutory change in 2006 or 2007 that provided an attorney affiliated with the newly created Office of Public Defender was required to serve in that capacity rather than a private lawyer such as Churchill. Morin also attempted to argue before the Commission that even if Churchill was properly appointed as Judy's attorney, Churchill only represented Judy's "best interests" and not Judy's "stated interests." The record reflects Morin's concerns about Judy's "stated interests" during the Commission hearing were not a part of any of her court filings or communications in the Guardianship Proceeding or in this proceeding.

18. The Order appointing Churchill was based on a form created prior to the change to the statute. While the form of order may not have conformed to the change in the statute, Morin did not at any stage of the Guardianship

Proceeding raise the “public defender” issue in any communication, pleading or brief.

19. Similarly, in regards to Morin’s contention in these proceedings that Churchill was not acting as an attorney despite the order appointing her and the award of attorney fees to her, Morin did not file a single pleading or make any other attempt to challenge Churchill’s status as Judy’s lawyer appointed by the district court. Following remand, Morin simply disregarded Churchill’s role as counsel for Judy, failing to serve her with pleadings. When Churchill insisted that she *was* Judy’s counsel, Morin simply responded she *was not*. She took no steps to address the issue with the court.

20. When Morin later contacted Disability Rights Montana and Genet McCann to become engaged in representation of Judy, she did not advise either of them that Churchill had been appointed by the court, whether as counsel or as GAL. The Commission finds that Morin created the distinction/division between Churchill’s roles as attorney and GAL solely as a defense to the ethical charges. Morin’s testimony supporting this contention is not credible.

21. During the pendency of Ron’s direct appeal, Morin filed an original proceeding before the Montana Supreme Court on February 3, 2014, entitled “*Petition for Writ of Mandate to Enforce the Guardianship Order of September 23, 2013.*” The matter was docketed as No. OP 14-0081. By an *Order* filed February 11, 2014, the Montana Supreme Court denied Morin’s petition. Ex. 15. This petition essentially sought the same relief her appeal requested: greater visitation for Ron.

22. The Montana Supreme Court affirmed Judge Krueger's rulings in an Opinion filed July 23, 2014 at 2014 MT 196, 376 Mont. 18, 329 P.3d 1273. Remittitur issued August 14, 2014. Ex. 20.

23. During and following Ron's direct appeal, in addition to the petition filed in the Montana Supreme Court, Morin filed a series of district court petitions for writ of mandate and related motions concerning Ron's visitation with Judy and ancillary issues. *Complaint ¶ 10; Answer 10.* The filings include a *Petition for Writ of Mandate* filed December 23, 2013 (denied January 7, 2014 — Ex. 13, in which the district court stated Churchill had been appointed attorney for Judy); a *Second Petition for Writ of Mandate* filed December 31, 2013; a *Motion to Enforce Guardianship Order and Third Petition for Writ of Mandate* (filed January 24, 2014, denied February 7, 2014, Ex. 14); a *Motion for Annual Report and Request for Consistent and Regular Visitation* filed November 19, 2015 (Ex. 25; denied December 23, 2015, Ex. 27); and a *Fourth Petition for Writ of Mandate* (filed December 21, 2015, denied January 7, 2016, Ex. 28). Morin did not appeal the denial of any of those filings.

24. In connection with her continuous efforts to advocate for greater visitation for Ron and protection of what she perceived as Judy's due process rights, Morin repeatedly engaged in overly dramatic characterizations of Judy's living situation at an assisted living home in court filings and in a series of letters or emails to Shapiro and others, claiming Judy was "incarcerated", in a communist prison, that the Guardians wanted to "destroy" the Lowneys financially, they "isolated" Judy, that she was depressed and lonely, was dying, the Bugnis

and their lawyer were immoral human beings and were “close to being exposed for Medicare fraud.” She made other exaggerated allegations founded only on Ron’s statements to her. Ex. 10, 11, 12, 16, 17, 18, 19, 21, 22, 23, 24, 26, 32, 33, and 34. She filed a status report with the court regarding what she claimed were the Guardians’ misrepresentations. Ex. 30.

25. Morin was obsessed with pursuing what she believed were failures on the part of Judy’s Guardians, Churchill, the courts, and everyone to accept her version of what was needed to protect Judy. Morin refused to accept the fact that Judy had suffered for years from multiple sclerosis and dementia, the courts had repeatedly ruled against Ron’s position, including the fact that they determined Ron had numerous psychological problems that interfered with his ability to care for his wife. Morin was determined to prove she was right. The communications with counsel amounted to an increasingly brutal verbal assault upon and harassment of the Guardians and their attorney.

26. In July or August 2016, Morin contacted Disability Rights Montana (“DRM”), a protection and advocacy agency that investigates alleged abuse and neglect and provides legal representation and other advocacy services to people with disabilities. DRM has federal statutory authority ensuring it reasonable, unaccompanied access to individuals with disabilities. DRM did not have to receive permission from the Guardians to visit Judy to investigate abuse and neglect complaints against caregivers. Morin sought DRM’s assistance for Judy under the premise disability discrimination was occurring. DRM advised her that obtaining expanded visitation for Ron was not within

the scope of its mandate and it had limited resources with which to obtain counsel for Judy. Morin did not advise DRM of Churchill's role in the Guardianship Proceeding.

27. On August 25, 2016 Morin emailed DRM and advised that she had located an attorney who would represent Judy. Ex. 38. Morin's efforts eventually led to an association agreement between Genet McCann and DRM on November 23, 2016 by which McCann would represent Judy to remove the Guardians and relocate her to Butte. Ex. 61. DRM attorney Roberta Zenker was to oversee the litigation. *Id.* Increased visitation for Ron was not part of the agreement, although McCann's communications with DRM repeatedly included references to Morin's intended action to place Ron in contact with Judy. *Id.*

28. Significantly, neither Morin nor McCann disclosed to DRM when offering McCann as an attorney for *Judy* and DRM agreeing to that representation that Morin had already orchestrated and approved an attorney-client contract between McCann and *Ron* that was executed on October 15, 2016. Ex. 37.

29. The Contract for Professional Services, Ex. 37, is deeply troubling on numerous levels:

- a. It is between McCann as "Attorney" and Ron as "Client." This is not a type of agreement by which an attorney may accept compensation from a third party to represent a client. See MRPC 1.8(f). Ron and Judy had adverse, conflicting interests.

- b. The scope of the representation is to “research and draft legal documents that best serve *Client*’s goal to remove the Guardians, Bob and Debbie Bugni” and to “research and draft initiating documents for federal (possibly state court) prosecution of the Guardians’ wrongful and tortuous [sic] conduct against Ron *and Judy*.” (emphasis supplied) Morin testified she did not advise McCann about Churchill’s involvement in the Guardianship Proceeding and did not supply McCann with the district court file.
- c. The retention agreement expressly states that “It is understood between and among the signatories that Genet McCann will appear as co-counsel at a time when her present caseload is lessened and new agreement is executed *with the informed consent of counsel, Tina Morin*.” (emphasis supplied)
- d. The retention agreement provides that McCann would take reasonable steps to keep Ron informed but that “**Attorney and Client agrees [sic] that these communications shall be conducted through Tina Morin, counsel in DG 11-15, or with her informed consent.**” (emphasis supplied)
- e. The signatories to the contract are McCann, Ron and Morin. Morin’s signature is affixed below this language: “Client’s present counsel, Tina Morin, remains counsel on the case, *and gives her informed consent to the terms of this contract*.”

Although McCann five weeks later would agree to represent Judy without compensation, she charged Ron a retainer of \$5,000.00.

30. Neither McCann nor Morin understood or acted consistent with the requirement that informed consent must be on the part of the client, not the attorney. There was no informed consent on the part of Ron or Judy's Guardians sought or obtained to waive the conflict (assuming it was a waivable conflict) or to this surrogate arrangement.

31. Morin used, directed and controlled McCann to ostensibly represent Judy while simultaneously representing a person with adverse interests, Ron, to pursue his and Morin's agenda.

32. Subsequent to the execution of the McCann-Ron fee agreement, Morin advised DRM that Ron desired more contact with Judy and that no one represented Judy's interests in the guardianship proceeding. Morin told DRM that attorney McCann was willing to represent *Judy*, even though McCann had at that time a representation agreement with *Ron*. Ex. 37.

33. Morin failed to disclose to DRM that not only had Churchill been appointed by the district court to represent Judy, but also failed to disclose to DRM the existence of the fee agreement between McCann and Ron.

34. Thereafter, DRM staff met with Judy in her assisted living facility and determined that Judy was happy living there despite her desire to see Ron more often and that there was no evidence of abuse or neglect.

35. On October 18, 2016, Morin emailed McCann that DRM would meet with them on October 20, 2016 regarding McCann's potential representation of Judy. Ex. 39.

36. At Morin's request, DRM staff attended a meeting with Morin and McCann on October 20, 2016. At the meeting, Morin proposed that McCann represent *Judy* in association with DRM so that McCann could utilize DRM's access authority to meet with Judy and enter into a representation agreement. DRM staff understood that McCann would be pursuing termination of the guardianship as counsel for Judy, and the written association agreement to that affect was entered into on or about November 21, 2016.

37. Following the October 20, 2016 meeting, McCann and DRM staff met with Judy that same day at her assisted living facility, at which Judy signed a written approval for McCann's representation. Ex. 61-11.

38. When DRM later questioned McCann's conduct and would not pursue action Morin wanted, Morin developed an unsubstantiated fixation that DRM attorney Zenker had some association or relationship with the Bognis and questioned DRM's commitment to Ron and Judy. She used not only her own emails but also McCann to advance that position and belittle DRM. Ex. 40, 45, 54, 55, 58, 59 and 60. The accusation of improper conduct was unfounded, a fact Morin later admitted while testifying in these proceedings. The incident is emblematic of Morin attacking anyone she perceives as interfering with her objectives.

39. Even though the association agreement between McCann and DRM for Judy was not yet executed and was to not involve visitation issues, on November 11, 2016, McCann emailed DRM's Zenker that "Tina is wanting to file motion with the court to order the guardians to allow Judy to visit with him." Ex. 43.

40. In response, Ms. Zenker made it clear that the role of DRM was not to be involved in the visitation issue. DRM had determined that within the scope of its duties, determining whether abuse and neglect had occurred, they found no supporting evidence. Ms. Zenker pointed out that a video statement of Judy was outside the representation agreement. Nevertheless, on November 23, 2016 McCann made a video recording of her interview with Judy concerning visitation with Ron and her placement in Helena. At the conclusion of the questioning, McCann assured Judy that she would be home in Butte with Ron imminently. Ex. 49.

41. On November 16, 2016, again before McCann had any agreement with DRM for representation of Judy and that any representation was not to involve visitation, Morin advised McCann via email that her paralegal would be sending McCann a petition for visitation with seven (7) exhibits and a proposed order. Morin's testimony that the email was simply as a template lacks credibility. Not only did Morin know DRM had instructed McCann not to pursue visitation issues, but there was no reason for the exhibits to be sent if she didn't intend McCann to adopt the pleading. By that action Morin continued to use McCann as a surrogate and agent to pursue visitation for Ron while McCann was, unknown to others, representing Ron and doing Morin's bidding.

42. Morin knew of the pending joint representation agreement between DRM and McCann that Morin had orchestrated, while also knowing of McCann's representation agreement with Ron and her role in that arrangement.

43. On November 22, 2016, Morin indicated to McCann that she could, with the DRM representation letter, permit Ron to meet with Judy without the Guardians' consent. Ex. 47. Morin used McCann's purported representation of Judy as a subterfuge to pursue expanded visitation for Ron.

44. On November 25, 2016, as purported counsel for Judy and in association with DRM, without first obtaining approval from Ms. Zenker and without filing a notice of appearance or substitution of counsel, McCann filed a *Petition for Writ of Mandate* concerning Ron's visitation with Judy. Ex. 51. McCann served Shapiro and Zenker. Although Morin is not on the certificate of service, she was aware of the filing.

45. Morin's repeated emails injecting herself into the DRM–McCann relationship and lecturing or accusing DRM finally caused Zenker, a law school classmate of Morin's, to write on November 29, 2016, "I do not wish to be unkind, nor unprofessional, however I must tell you that your further input is neither warranted nor welcome. The association agreement was between DRM and Genet, and does not involve you." Ex. 52.

46. On December 5, 2016, Shapiro filed a responsive brief on behalf of the Guardians to McCann's petition. Ex. 57. Because McCann's filing indicated DRM was involved,

Shapiro served his response on DRM as well as on McCann and Morin.

47. In response to McCann's filing, DRM advised McCann that filing a motion concerning visitation was outside the scope of DRM's involvement or their agreement, which was limited to petitioning for removal of the guardianship. DRM requested that the motion be clarified that it was not filed on behalf of DRM.

48. McCann's response to being chastised by Ms. Zenker in a phone call for that filing and not obtaining her approval as required was to apologize and explain that "Tina was pushing hard for it." Ex. 61.

49. Despite her stated intention to amend the petition as DRM demanded, McCann delayed that action. On December 5, 2016, Morin authored a proposed response for McCann to send to DRM and Zenker, accusing *them* of unethical conduct. Ex. 59. On December 8, 2016, DRM terminated its association agreement with McCann based upon her failure to comply with the scope of the agreement. Ex. 61.

50. On December 13, 2016 Morin advised McCann of the arguments to make to contend the Guardians were not expressing Judy's wishes. Ex. 62.

51. It was not until December 19, 2016, that McCann moved to withdraw her *Petition for Writ of Mandate*. Ex. 66.

52. On December 20, 2016, Judge Krueger dismissed McCann's *Petition for Writ of Mandate*. Ex. 67.

53. At no time did Churchill provide her consent for McCann to meet with Judy concerning the subject matter of her guardianship. Likewise, the Guardians and Shapiro were unaware that McCann would be meeting with Judy. The court never approved McCann's communications with Judy.

54. McCann was not an employee or agent of DRM.

55. Although Morin testified that she was professional in her dealings with opposing counsel, her communications demonstrate the opposite. They amounted to a continuous, escalating, vitriolic attack on Shapiro and unfounded accusations against DRM and Ms. Zenker when Morin perceived them as not taking steps to obtain expanded visitation for Ron. Morin's email of December 28, 2016 to Shapiro reflects the tenor of her communications with counsel, in which she included the statement 'Please do not spout your standard line of crap Mr. Shapiro.'

56. Morin and others involved in the Guardianship Proceeding knew Churchill represented Judy. But only Morin, McCann and Ron knew that McCann represented Ron at the same time she also purported to represent Judy based on Morin's sponsorship and direction. Morin arranged for new counsel for Judy, using McCann as her agent. McCann pursued Ron's interests without McCann or Morin disclosing the conflict and surrogate nature of the relationship between Morin and McCann. They did so without the knowledge or consent of Churchill, the court or the Guardians.

57. In communications with Shapiro and Churchill, Morin on occasion did refer to Churchill as "GAL" (Ex. 10

for example), but in not one of those communications did she contend Churchill's role was limited to that of a GAL. At no time did Morin file a motion with or seek guidance from the court as to the scope of Churchill's role, contend in any pleading Churchill was not counsel for Judy, or otherwise take any action in the Guardianship Proceeding or the appeal that is consistent with or supports her current position regarding Churchill's role in that case. She failed to do so even though Churchill told Morin that she was Judy's attorney.

58. Morin's defense that Churchill was not acting as attorney for Judy Lowney is contrary to the plain language of the order of appointment, inconsistent with Morin's own conduct, lacks credibility, involves a strained and tortured construction of court orders and statutes, and is contrary to her own conduct in the Guardianship Proceeding.

59. By meeting with Judy through her agent and surrogate McCann, Morin communicated about the subject of a representation with a person the attorney knew to be represented by another attorney in the matter, without the consent of the other attorney, authorization by law, or a court order.

60. Morin knowingly assisted and/or induced McCann into violating the MRPC. The deception regarding McCann's dual representation continued after withdrawal of the petition McCann filed. On January 5, 2017, Morin emailed McCann with a proposed response to a Shapiro communication and included this point McCann should make: "Fifth, I do not represent Mr. Lowney although I do speak with his attorney frequently because as you

might expect, Ron and Judy's interests are identical — they have been married 50 years. There is no boogie man in me consulting with Judy's husband's attorney as you try to suggest." Ex. 71. That statement was a lie. Morin and McCann knew the latter represented Ron as well as Judy Lowney. Morin believed McCann continued to represent Judy, because on June 14, 2017 she asked her to make an emergency request to DRM to address Ron's concerns. Ex. 81.

Based upon the forgoing factual conclusions, the Commission reaches the following legal conclusions:

#### **CONCLUSIONS OF LAW**

1. McCann was Morin's agent and surrogate in conduct involving Ron and Judy Lowney.
2. The Order appointing Churchill appointed her as attorney and in that capacity as an attorney for Judy she had the powers of a guardian *ad litem*. The change in the statute regarding appointment of guardians was not raised by Morin in the Guardianship Proceeding and any attempt to collaterally attack that procedure in this proceeding is impermissible.
3. The case register in the Guardianship Proceeding does not indicate the case was closed in 2014. Any such contention is incorrect on the face of the document. The notation is a clerical, administrative notation only and the docket reflects case activities by counsel after the date of that notation.

4. Churchill's role as a GAL did not terminate as a matter of law or otherwise when the permanent guardians were appointed. The Bognis were appointed in 2013. No order was ever entered relieving Churchill of her duties as counsel or as guardian *ad litem*. The district court and appellate files establish Churchill's status as Judy's attorney.

5. *Jacobson v. Thomas*, 2004 MT 273, 323 Mont. 183, 100 P.3d 106, reversed on other grounds in *Jacobsen v. Thomas*, 2006 MT 212, ¶ 18, 333 Mont. 323, 328, 142 P.3d 859, recognizes that an attorney may act as both counsel and as a guardian.

6. Rule 4.2(a), MRPC, precludes an attorney from communicating about the subject of a representation with a person the attorney knows to be represented by another attorney in the matter, absent consent of the other attorney or authorization by law or court order.

7. Under Rule 4.2, MRPC, a lawyer may not accomplish such communication by using a surrogate or agent. A lawyer cannot accomplish indirectly what he or she cannot accomplish directly. The lawyer may not cause the contact by a third party. *Bratcher v. Ky. Bar Ass'n*, 290 S.W.3d 648 (Ky. 2009); ABA Formal Ethics Op. 95-396 (1995). Also, see generally Douglas R. Richmond, *Deceptive Lawyering*, 74 U. Cin. L. Rev. 577 (Winter 2005). A lawyer may not use a surrogate to violate the rule. *United States v. Brown*, 595 F.3d 498, 503 (3d Cir. 2010).

8. Rule 8.4(a), MRPC, provides that it is professional misconduct for an attorney to knowingly assist or induce another attorney into violating the Rules of Professional Conduct.

9. To “know” denotes actual knowledge of the fact in question. Rule 1.0(h), MRPC. A person’s knowledge may be inferred from circumstances. *Id.*

10. Morin violated Rule 4.2(a), MRPC.

11. Morin violated Rule 8.4(a), MRPC.

12. Morin violated Rule 8.4(d), MRPC.

### **RECOMMENDATION FOR DISCIPLINE**

It is the unanimous recommendation of the Commission that Morin be suspended from the practice of law for a period of not less than seven (7) months and that she be assessed the costs of these proceedings in accordance with the rules and practice of this Court.

### **RATIONALE FOR RECOMMENDATION**

This is the second disciplinary proceeding involving Ms. Morin decided within a year. In each instance her conduct cannot be excused as overzealous advocacy. Instead, it is a reflection of an unreasonable method of practicing law that employs intimidation, accusation and artifice to accomplish her goals, especially if her position is disputed or rejected. For instance, Morin testified she decided Adult Protective Services would not assist her based on their involvement in the district court, so she contrived a plan using DRM to gain access to Judy with DRM’s federal visitation credentials. Morin’s use of Genet McCann as her surrogate to attempt to obtain expanded visitation for Ron Lowney — in direct contradiction to the instructions from DRM and without disclosing the

existence of an attorney-client relationship between McCann and Ron Lowney that Morin controlled - is deeply disturbing. The deception was on-going, intentional and insidious: Disbarment would be a viable option. As late as June 2017, Morin was still using McCann to push for visitation for Ron. Ex. 81.

Ms. Morin's conduct displays a determination to accomplish her goals by any means, including unethical ones. In the previous disciplinary proceeding when told she couldn't file pleadings in a federal court case and her then attorney refused to file it, she tried to circumvent that ruling by attaching a brief authored by her but appearing to be from her counsel to an affidavit submitted by her when there was no good cause for the affidavit to be filed. Her effort to explain her conduct there was not credible.

Here, when the district court and the Montana Supreme Court ruled against her goal of obtaining greater visitation for Ron, she unreasonably persisted in achieving that aim. She first filed multiple pleadings seeking the same relief. When that effort failed, she used Ms. McCann as a surrogate. In doing so, she failed to disclose to DRM, Churchill, the district court, or anyone else, that she had already arranged for McCann to represent Ron and then orchestrated McCann's improper concurrent representation of Judy.

Morin's explanations in these proceedings for her conduct were viewed as after-the-fact justifications or excuses not supported by the record. The fact that Morin failed in this proceeding and in her previous experience before the Commission to show any remorse, to accept responsibility for or to express contrition for conduct that

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involves such deception is significant to the Commission. Her actions reflect disrespect for basic tenets of honesty and courtesy and warrant in the Commission's view a severe penalty.

Dated this 2<sup>nd</sup> day of January, 2019

/s/  
Ward Taleff, Chair