

FILED

06/06/2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 16-0301

FILED
Case Number: PR 16-0301

JUN 06 2017

IN THE MATTER OF LUCAS J. FOUST,

An Attorney at Law,

Respondent.

Ed Smith
CLERK OF THE SUPREME COURT
ORDER STATE OF MONTANA

On May 16, 2016, a formal disciplinary complaint was filed against Montana attorney Lucas J. Foust. The disciplinary complaint may be reviewed by any interested persons in the office of the Clerk of this Court.

The Commission on Practice held a hearing on the complaint on April 20, 2017, at which hearing Foust was present with counsel and testified on his own behalf. On May 2, 2017, the Commission submitted to this Court its Findings of Fact, Conclusions of Law, and Recommendation for discipline. Foust filed a response stating he has no objection to the Commission's findings, conclusions, and recommendation.

The Commission found that, between February 2011 and October 2014, Foust, a solo practitioner, disbursed from his IOLTA trust account all or part of his attorney fees and out-of-pocket expenses in anticipation of receipt of settlement proceeds for the cases associated with those fees. In his words, he "borrowed" from his IOLTA trust account to pay his fees and costs before they were earned or payable. During the same period, Foust distributed to some clients their shares of anticipated settlement proceeds from his IOLTA trust account before he received the settlement proceeds in their cases. Foust used trust funds that belonged to other clients and his own earned fees from settled cases to cover the money improperly withdrawn from his trust account. In addition, between April 2012 and February 2015, Foust did not give a number of clients all the money owed and belonging to them. The Office of Disciplinary Counsel (ODC) brought this issue to Foust's attention based on a forensic analysis it did of his accounts after he self-reported an overdraft in his

IOLTA trust account in 2014. The Commission found that Foust has since paid the funds owed to the respective clients.

The Commission concluded that Foust's use of funds belonging to others, including his transfer of approximately \$180,000 not belonging to him from his IOLTA trust account to his operating account, constitutes misappropriation and mishandling of funds in violation of Rules 1.15, 1.18, and 8.4(c) of the Montana Rules of Professional Conduct (MRPC). It concluded that Foust violated Rule 1.15, MRPC, by failing to hold property belonging to his clients and/or others separate from his own property in accordance with Rule 1.18, MRPC. It concluded he violated Rule 1.15, MRPC, by failing to promptly deliver funds to which clients were entitled, and that he violated Rule 1.18(e)(2) by failing to maintain his IOLTA account in accordance with the Trust Account Maintenance and Audit Requirements pursuant to Rule 1.18(e)(2), MRPC. Finally, the Commission concluded Foust violated Rules 1.15 and 1.18, MRPC, by taking fees before they were earned.

The Commission states that, although this case does not involve deliberate "stealing" from a trust account and misrepresentation to clients about the status of their funds, it does represent "an egregious example of an attorney who took virtually no steps to maintain even the semblance of an accounting of his clients' funds." The Commission recommends that, as a result of his violations of the Montana Rules of Professional Conduct, Foust be disciplined by suspension from the practice of law in Montana for an indefinite period of not less than seven months. The Commission also recommends that Foust be ordered to pay the expenses of ODC's reconstruction of his records.

Based upon the foregoing,

IT IS HEREBY ORDERED:

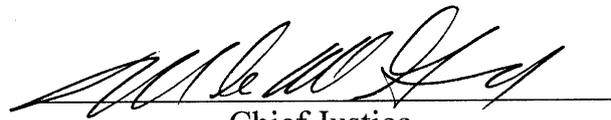
1. The Commission's Findings of Fact, Conclusions of Law, and Recommendation are ACCEPTED and ADOPTED.

2. Lucas J. Foust is hereby suspended from the practice of law in Montana for an indefinite period of not less than seven months, effective on the date he has suggested, June 21, 2017.

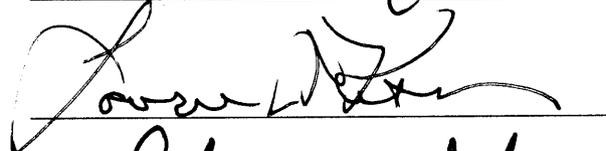
3. Foust shall pay the costs of these proceedings, including the costs to ODC of reconstructing his trust account records, subject to the provisions of Rule 9(A)(8) of the Montana Rules for Lawyer Disciplinary Enforcement allowing objections to be filed to the statement of costs.

The Clerk of this Court is directed to serve a copy of this Order of Discipline upon Lucas J. Foust and to provide copies to Disciplinary Counsel; the Office Administrator for the Commission on Practice; the Clerks of all the District Courts of the state of Montana; each District Court Judge in the state of Montana; the Clerk of the Federal District Court for the District of Montana; the Clerk of the Circuit Court of Appeals of the Ninth Circuit; and the Executive Director of the State Bar of Montana.

DATED this 6th day of June, 2017.

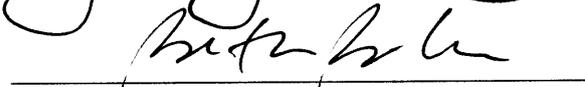

Chief Justice

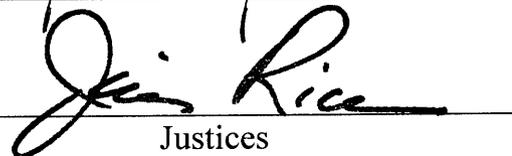











Justices