Mark D. Parker
PARKER, HEITZ & COSGROVE, PLLC
401 N. 31st Street, Suite 1600
P.O. Box 7212
Billings, MT 59103-7212
Phone: (406) 245-9991
Email: markdparker@parker-law.com

Christian Brian Corrigan
Solicitor General
OFFICE OF THE ATTORNEY GENERAL
215 North Sanders
Helena, MT 59601
Phone: (404) 444-2797
Email: Christian.Corrigan@mt.gov

Tyler Green*
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
Phone: (703) 243-9423
Email: tyler@consovoymccarthy.com
**Pro hac vice*

Shane P. Coleman
Billstein, Monson & small PLLC
1555 Campus Way, Suite 201
Billings, MT 59102
Phone: (406) 656-6551
Email: shane@bmslawmt.com

Attorneys for Respondent

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

IN THE MATTER OF AUSTIN MILES KNUDSEN,	)	Supreme Court Cause No. PR 23-0496 ODC File No. 21-094
An Attorney at Law,	)	**RESPONDENT'S BRIEF IN SUPPORT OF SECOND RULE 60(a) MOTION**
Respondent.	)	

INTRODUCTION

The Commission on Practice ("Commission") should correct the oversight in its decision to grant the Office of Disciplinary Counsel's ("ODC") motion in limine to exclude the expert testimony and report of Professor Thomas Lee. The Commission didn't afford Respondent the statutorily allotted time to respond to ODC's motion under Uniform District Court Rule 2. Nor did the Commission order expedited briefing. Respondent respectfully requests the opportunity to respond to ODC's motion.

This oversight or error has significant consequences. ODC's motion in limine does not accurately describe the Montana Rules of Evidence and fails to provide an adequate explanation for excluding the relevant and helpful expert testimony of Professor Lee. The exclusion of Professor Lee's report severely prejudices Respondent's defense. The Montana Rules of Evidence embrace a liberal approach to expert testimony and the Commission routinely accepts testimony from expert witnesses who opine on standard industry practices and whether certain conduct fits within reasonable parameters of those professional standards. *See infra* Part II. Excluding Professor Lee's testimony and report—especially without allowing Respondent to oppose ODC's motion—triggers severe due process concerns.

LEGAL STANDARD

Montana Rule of Civil Procedure 60 permits parties to seek reconsideration and relief from orders that were entered by mistake, in violation of law, or in a manner that works injustice on the parties. Rule 60(a) allows for correction of simple clerical mistakes, while Rule 60(b) allows for correction of substantive mistakes.

Respondent seeks reconsideration of the Commission's September 30, 2024, Order under both parts of the Rule.

Rule 60(a) permits a court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." A court may "correct clerical errors … at any time, since correction of such errors does not alter the substantive rights of the parties." *Davenport v. Odlin*, 2014 MT 109, ¶ 15, 374 Mont. 503, 327 P.3d 478. Federal law is instructive. *Muri v. Frank*, 2001 MT 29, ¶ 12, 304 Mont. 171, 18 P.3d 1022 ("Montana's Rule 60(a) is modeled on Rule 60(a) of the Federal Rules of Civil Procedure; thus, we look to interpretation of the Federal Rules for guidance."). Because the Commission's failure to allow Respondent to respond to ODC's opposed motion may have been a clerical oversight, Rule 60(a) is one appropriate vehicle for relief. *See United States v. Hernandez*, 2022 U.S. Dist. LEXIS 172948, at *4 (D. Idaho Sep. 22, 2022) (argument that the court made a procedural error was essentially that the court made a mistake arising from an oversight and therefore covered by Rule 60(a)); *cf. Sartin v. McNair Law Firm PA*, 756 F.3d 259, 265 (4th Cir. 2014) (Rule 60(a) also permits "courts to perform mechanical adjustments to judgments, such as correcting transcription errors and miscalculations").

Meanwhile, Rule 60(b) allows a court to reconsider or correct an order for substantive reasons such as when the order is based on a mistake, is void, would be unequitable to enforce, or for "any other reason that justifies relief." M.R.C.P. 60(b)(6).[1]

[1] Montana traditionally treated relief under Rule 60(b)(6) as available only in "situations other than those enumerated in the first five subsections of the rule." *Matthews v. Don K. Chevrolet*, 2005 MT

While "relief under Rule 60(b) is available only in 'extraordinary circumstances,'" courts widely agree that relief under Rule 60(b)(6) is appropriate when an order results in "risk of injustice to the parties." *Buck v. Davis*, 580 U.S. 100, 123 (2017) (citation omitted). The Montana Supreme Court has stated that Rule 60(b)(6) is another appropriate vehicle for relief when a tribunal rules on an opposed motion without giving the other party a chance to respond. *See Fennessy v. Dorrington*, 2001 MT 204, ¶ 7, 306 Mont. 307, 32 P.3d 1250.

ARGUMENT

I. THE COMMISSION DENIED RESPONDENT TO THE OPPORTUNITY TO RESPOND TO ODC'S OPPOSED MOTION, IN VIOLATION OF DUE PROCESS.

Rule 12(c)(3) of the Rules for Lawyer Disciplinary Enforcement provides that "hearings in disciplinary proceedings shall be conducted in accordance with the Montana Rules of Civil Procedures." Likewise, Rule 22(A) of the Rules for Lawyer Disciplinary Enforcement provides that "the Rules of Civil Procedure of the State of Montana apply in disciplinary cases." Montana Uniform District Rule 2 governs motions practice. Rule 2(b) provides that "within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents."

164, ¶ 17, 327 Mont. 456, 461, 115 P.3d 201. And Rule 60(b)(1) allows for relief caused by a "mistake." The type of error Respondent identifies, *see infra* Part I, could be viewed as a "mistake"—but the Montana Supreme Court has ruled that entering an order before time to respond expired is subject to Rule 60(b)(6) relief, not Rule 60(b)(1) relief. *See Fennessy v. Dorrington*, 2001 MT 204, ¶ 7, 306 Mont. 307, 32 P.3d 1250. And the Montana Supreme Court more recently adopted an interpretation of subsection (b)(6) that permits a court to vacate a judgment "whenever such action is appropriate to accomplish justice." *Bartell v. Zabama*, 2009 MT 204, ¶ 27, 351 Mont. 211, 214 P.3d 735. Respondent therefore seeks reconsideration under Rule 60(b)(6), without waiving his right to seek reconsideration under Rule 60(b)(1).

ODC contacted Respondent about its motion in accordance with Rule 2(a). Respondent answered that he opposed the motion to exclude Professor Lee's testimony. ODC filed its motion on Friday, September 27, 2024—five calendar days and three business days before the deadline for such motions. On page 2 of that motion, ODC noted that Respondent objected to the relief requested, thereby placing the Commission on notice that the motion was not unopposed. By rule, once ODC filed its motion, Respondent had 14 days to file a response in opposition, absent an order from the Commission shortening the time to respond. Even still, the Commission granted ODC's motion on Monday, September 30, 2024—the very next business day. ODC did not request, nor did the Commission order, expedited briefing on the motion. Respondent didn't waive his opportunity to respond and was prepared to enter a timely response well before the scheduled hearing. *See infra* Part II.

Denying Respondent an opportunity to respond to ODC's motion deprived Respondent of the fundamental guarantees of due process. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Tai Tam, LLC v. Missoula County*, 2022 MT 229, ¶ 25, 410 Mont. 465, 520 P.3d 312 (quoting *Smith v. Bd. of Horse Racing*, 1998 MT 91, ¶ 11, 288 Mont. 249, 956 P.2d 752; *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This "opportunity to be heard" is "tailored" to the specific "circumstances" of the proceeding. *Goldberg v. Kelly*, 397 U.S. 254, 268–69 (1970). For motions seeking various types of relief, the "party interested in resisting the relief sought by a motion has a right to notice and an opportunity to be heard." *State ex rel. McVay v. District Court*

of Fourth Jud. Dist., 126 Mont. 382, 393, 251 P.2d 840 (1953). If a tribunal denies the "opportunity to be heard on the motion made … all subsequent actions by the … court [are] null and void." *State ex rel. Mont. St. Univ. v. District Court, Fourth Jud. Dist.*, 132 Mont. 262, 272, 317 P.2d 309 (1957). Since the Commission entered an order on ODC's motion "without first affording [Respondent] the opportunity to respond in writing," the Commission has "den[ied] him due process of law."

This is not the first Rule 60 motion for reconsideration based on the COP's denial of an opportunity to file a response in opposition that Respondent has had to file in this proceeding. And in its October 1, 2024, Order denying the previous Rule 60 motion, the Commission cited *Patrick v. State*, 2011 MT 169, ¶ 29, 361 Mont. 204, 257 P.3d 365, to support its conclusion that "it was not a due process violation to rule" before Respondent filed his response in opposition to ODC's motion. But *Patrick* never stated that tribunals can rule on motions and grant relief without waiting for the opposing party to be heard. In *Patrick*, the titular party filed a motion, then the state filed a *response* in opposition, and then the district court denied the motion without waiting for Patrick's *reply* to the state's response. *Patrick*, ¶ 29. The entire matter turned on the lack of a final *reply* brief—not the lack of the opposing party's *response* brief. When Patrick complained that his due process was violated, the Montana Supreme Court answered since Patrick was the moving party and "had the opportunity to present all of his contentions" in his initial motion, he had not been denied the opportunity to be meaningfully heard. *Id.* The same simply cannot be said here. Respondent did *not* have "the opportunity to present all of his contentions" because

the Commission ruled on ODC's motion in limine without waiting to hear what Respondent might argue in opposition. If anything, *Patrick* supports the principle that Respondent must have a chance to "present all of his contentions" on a given matter before the Commission can enter a ruling. *Id.* Currently, the COP has denied Respondent that right.

Indeed, the Montana Supreme Court itself has established that this sort of behavior violates due process and is subject to Rule 60(b)(6) reconsideration. In *Fennessy v. Dorrington*, the district court granted a motion to dismiss before the time to respond allowed by Uniform District Court Rule 2 had elapsed—even though the other party had indicated it would oppose the motion. *Fennessy*, ¶ 1. The district court denied a Rule 60(b)(6) to reconsider the order, but the Montana Supreme Court reversed and held that the district court "abused its discretion by failing to follow Uniform District Court Rule 2" and granting a motion even though "Fennessy's time for responding had not yet expired[.]" *Fennessy*, ¶ 11. Likewise, here the Commission has abused its discretion and violated Respondent's due process right to be heard by ruling on motions integral to the presentation of evidence at trial before Respondent has even had a chance to respond.

To the extent that the Commission's September 30, 2024, Order was simply an oversight or mistake regarding the time remaining for Respondent to file his response in opposition, the Commission should correct its mistake using Rule 60(a). To the extent the Commission's Order resulted from a misunderstanding of *Patrick* and Respondent's due process right to be heard, Rule 60(b)(6) requires correcting that

mistake to avoid an unjust result. In either event, Rule 60 requires granting Respondent relief from the Commission's September 30, 2024, Order excluding the testimony of Professor Thomas Lee.

II. THE TESTIMONY OF RESPONDENT'S EXPERT IS ADMISSIBLE UNDER MONTANA RULES OF EVIDENCE AND SHOULD NOT BE EXCLUDED.

Professor Thomas Lee's expert testimony will help the trier of fact understand the nuanced underlying factual scenario and his testimony speaks only to the issue of predicate *facts*, not to the ultimate issue of the legal conclusion that the Commission must reach. ODC's motion does not identify a single statement of the report or expected testimony that expresses an impermissible opinion on the legal conclusion. And even if ODC identifies an impermissible statement later, the appropriate response would be to exclude the singular line of the report or strike the singular line of testimony—not the wholesale exclusion of a critical defense witness. The Commission should deny ODC's motion in limine that seeks to exclude Professor Lee's testimony.

The Montana Rules of Evidence govern the resolution of evidentiary disputes in disciplinary hearings before the Commission on Practice. *See In re Potts*, 2007 MT 81, ¶ 65, 336 Mont. 517, 158 P.3d 418. "Generally, all relevant evidence is admissible[.]" *State v. Santoro*, 2024 MT 136, ¶ 19, 417 Mont. 92, 551 P.3d 822 (citing M.R. Evid. 402). Expert testimony must clear a few more thresholds. For one, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." M.R. Evid. 702. For another, while expert testimony may take "the form of an opinion or inference" that "embraces an ultimate issue to be decided by the trier

of fact," M.R. Evid. 704, it may not express an opinion on an ultimate issue of law, *see Potts*, ¶ 65. The expert report and testimony of Professor Lee easily clears those evidentiary thresholds.

A. Professor Lee's Report and Testimony Will Assist the Trier of Fact.

Rule 702 allows experts with specialized "knowledge, skill, experience, training, or education" to help the trier of fact comprehend nuanced factual disputes by offering opinions that "describe recognized principles of their specialized knowledge, provide general background, or simply … explain other evidence." *Santoro*, ¶ 19 (citations omitted).

In practice, Rule 702 permits the liberal admission of expert testimony on matters such as reasonable professional behavior and best practices in professional situations. The language of Montana's Rule 702 mirrors the language of the original federal Rule 702. But while the federal rules have been changed to reflect the additional gatekeeping required by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592–93 (1993), the Montana Supreme Court has rejected attaching any *Daubert*-derived increasing gatekeeper test except "to determine the admissibility of novel scientific evidence." *Hulse v. State, Dept. of Justice, Motor Vehicle Div.*, 1998 MT 108, ¶ 57, 289 Mont. 1, 961 P.2d 75. The new *Daubert*-inspired federal rule is said to be a "flexible" standard that "should be applied with a 'liberal thrust' favoring admission[.]" *Hardeman v. Monsanto Co.*, 997 F.3d 941, 960 (9th Cir. 2021) (citations omitted). The older, unamended Montana Rule 702 stands for an even more liberal admission of expert testimony. As the Montana Supreme Court often reminds, "trial

courts" are "encouraged … to 'construe liberally the rules of evidence so as to admit all relevant expert testimony[.]'" *Beehler v. Eastern Radiological Assocs., P.C.*, 2012 MT 260, ¶ 23, 367 Mont. 21, 289 P.3d 131 (quoting *State v. Damon*, 2005 MT 218, ¶¶ 17–19, 328 Mont. 276, 119 P.3d 1194; *see also Santoro*, ¶ 22; *State v. Southern*, 1999 MT 94, ¶ 56, 294 Mont. 225, 980 P.2d 3. It's better to "admit all relevant expert testimony" and open the matter to "vigorous cross-examination" and "presentation of contrary evidence" than to exclude beneficial expert testimony before a proceeding even begins. *Santoro*, ¶ 25 (citations omitted).

This liberal approach to the admission of expert testimony has resulted in the widespread use of experts to establish professional standards of care, reasonable professional behavior, and best professional practices—including testimony before the Commission on Practice regarding alleged violations of the MRPC. *See, e.g.*, *In re Doud*, 2024 MT 29, ¶ 45, 415 Mont. 171, 543 P.3d 586; *In re Olson*, 2009 MT 455, ¶ 10, 354 Mont. 358, 222 P.3d 632; *In re Engel*, 2007 MT 172, ¶ 27, 338 Mont. 179, 169 P.3d 345; *In re Johnson*, 2004 MT 6, ¶ 10, 319 Mont. 188, 84 P.3d 637. In *Doud*, ODC itself called an expert who opined on the best practices, or "proper," method of record-keeping and billing when an attorney was alleged to have violated MRPC 8.4(c). *Doud*, ¶ 45. In *Olson*, the Commission heard testimony from "an expert on professional responsibility" who testified that the accused attorney "was not required by law" to "turn the physical items over to law enforcement"—prompting the Commission to find that the attorney did not violate MRPC 8.4.(b), (c), or (d). *Olson*, ¶ 17. In *Engel*, ODC recruited an expert witness who testified about standard, or "customary,"

representation regarding billable time and fee arrangements when an attorney was accused of violating MRPC 1.5(a). *Engel*, ¶ 27. And in *Johnson*, the Commission entertained expert testimony on the meaning and application of the ethical terms "full disclosure" and "after consultation." *Johnson*, ¶ 10.

Of course, an expert may not offer opinions on legal conclusions, such as the ultimate meaning of the ethical duties imposed by the MRPC. As ODC helpfully pointed to, in *Carlson v. Morton*, 229 Mont. 234, 745 P.2d 1133 (1987), the Montana Supreme Court confirmed that "the Model Rules of Professional Conduct … establish the bounds of ethical conduct by lawyers[.]" *Id.* at 237. But expert testimony can still help explain the predicate factual scenario and the existing professional standards of conduct that coexist with and inform the MRPC. The *Carlson* court itself recognized that reality, just one paragraph later, when it laid down the rule for expert testimony in legal ethics cases: When the "issue is whether the applicable ethical rules create a duty" such that the factfinder can "determine a breach of a legal duty merely by determining whether the attorney abided by the rules," in such cases "an expert witness *must* testify so as to acquaint the [factfinders] with the attorney's duty of care." *Id.* (emphasis added). ODC must prove its allegations with clear and convincing evidence. So it's not enough "that various disciplinary rules were breached in [ODC's] opinion; rather [ODC] must demonstrate that [Knudson] failed in his legal duty," and "[p]roof of such a breach *requires* expert testimony." *Id.* at 240 (emphasis added); *see also Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 34, 303 Mont. 274, 16 P.3d

1002 ("[E]xpert testimony is required to establish that attorney departed from the prevalent standard of care." (citing *Carlson*)).

To be sure, the requirement that expert witnesses must help establish the appropriate standard of care relevant to the legal ethics claims at issue does not exist because the average factfinder is simply "not capable of understanding such matters," but only such factfinders have often "never had the occasion or desire to study such matters." *Carlson*, 229 Mont. at 240. The "attorney's standard of care" is a nuanced and situation-specific duty, which "depends upon the skill and care ordinarily exercised by attorneys." *Id.* Both laypeople and attorneys unfamiliar with the relevant practice area benefit from the informed testimony of an expert on those issues. For example, an attorney on the Commission who has spent a career litigating medical malpractice cases will benefit from expert testimony on professional duties when communicating with criminal defendants. An attorney on the Commission whose practice is entirely transactional will benefit from expert testimony on the best practices of courtroom etiquette during litigation. This case involves complex facts about an Attorney General's good-faith representation of the interests of one branch of constitutional government in a novel and, at the time, an as-yet unanswered separation-of-powers dispute with another branch of constitutional government. The informed opinions of an esteemed professor and former jurist who is familiar with such separation-of-power conflicts and who has witnessed varying representation styles from a multitude of attorneys will help all members of the Commission, attorneys and laypeople alike.

Given Montana's liberal approach to expert testimony and the Commission's established practice of allowing experts to testify on best practices and reasonable professional behavior, and since the expert testimony relates to a novel legal situation and will assist the trier of fact with the predicate facts undergirding the allegations, Professor Lee's testimony is admissible under Montana Rule of Evidence 702.

B. Professor Lee's Testimony Does Not Address the Ultimate Legal Question.

ODC also seeks to exclude Professor Lee's testimony under Montana Rule of Evidence 704. Rule 704 provides that expert testimony "in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." In other words, an expert witness can opine on the ultimate question of any underlying facts, so long as he does not "state[] a legal conclusion or appl[y] the law to the facts[.]" *Perdue v. Gagnon Farms, Inc.*, 2003 MT 47, ¶ 28, 314 Mont. 303, 65 P.3d 570.

This dichotomy between permissible opinions on fact and impermissible opinions on law leaves significant leeway for expert witnesses to testify about the predicate facts that inform accepted industry standards, reasonable industry behavior in some cases, and where a certain type of behavior might fall within those parameters. In practice, this means the prohibition against expert opinions on the ultimate legal question bars only a narrow range of opinions. To be sure, an expert witness may not explicitly express opinions on whether an individual violated a legal duty. So, in *In re Potts*, 2007 MT 81, 336 Mont. 517, 158 P.3d 418, when the accused attorney disclosed that his expert would explicitly testify that he "did not violate the Rules of

Professional Conduct," the Commission properly excluded such testimony. *Id.* ¶ 65. And in the case cited by ODC, it was reversible error when an expert witness explicitly testified that an insurer "violated subsection (4) of the [Unfair Claim Settlement Practices] Act," "violated subsection (6) of the Act," and "violated subsection (7) of the Act." *Hart-Anderson v. Hauck*, 230 Mont. 63, 68 (1988).

But absent such explicit statements of legal conclusion, Rule 704 permits expert witnesses to testify in detail about the factual reality of professional standards, reasonable behavior within those standards, and opinions on discrete factual scenarios within those standards. So an expert witness can testify about both "the standards of industry practice which he believes should be followed" and "whether [the party] violated any of the industry standards he had identified." *Peterson v. St. Paul Fire & Marine Ins.*, 2010 MT 187, ¶ 67, 357 Mont. 293, 239 P.3d 904. In *Peterson*, the Montana Supreme Court ruled that such testimony was proper, particularly since the trial court reminded the jury that the applicable "law may be different than these [industry] standards," so even though the expert opined on whether the party "comported with those *standards*," it was still the jury's role to determine whether the same conduct "conform[ed] with the law or not." *Id.* (emphasis added). And, as already discussed, the Commission routinely accepts the testimony of various legal experts who opine on proper or best practices, reasonable professional behavior, and whether an individual did or did not comply with industry standards. *See, e.g.*, *Doud*, ¶ 45; *Olson*, ¶ 17; *Engel*, ¶ 27; *Johnson*, ¶ 10.

In its motion, ODC failed to identify even a single line of Professor Lee's report that expressed an impermissible opinion on the ultimate legal conclusion of this case. The only language ODC objects to is Professor Lee's statements on "acceptable" "norms," "standards of conduct," and what methods of representation are "required." *See* ODC Mot. in Limine, at 4. Yet, as *Peterson* and *Olson* demonstrate, these are the very types of informed opinions on which expert testimony is permitted. ODC does not, and cannot, point to any line where Professor Lee expresses the type of opinion forbidden by Rule 704—those that explicitly opine on whether any specific provision of the MRPC has been violated. *See Potts*, ¶ 65; *Hart-Anderson v. Hauck*, 230 Mont. at 68. Nor will Professor Lee express such opinions at trial. And even if he were to do so, the appropriate remedy would be to strike the improper testimony—not to exclude a relevant, critical defense witness altogether.

Professor Lee's testimony and report speak only of accepted professional legal standards, reasonable attorney behavior, and opinions on how specific behavior interacts with those standards. Such opinions do not usurp the Commission's ultimate role or impermissibly speak to the ultimate legal issue at hand. Rule 704 allows expert witnesses to testify about professional practices and industry standards; the Commission retains the ultimate decision of whether any specific conduct violated the MRPC. So Professor Lee's testimony does not violate Montana Rule of Evidence 704.

C. The Commission's Two Precedents Are Distinguishable.

In its motion in limine, ODC points to a single Commission precedent that ODC claims supports the exclusion of Professor Lee's testimony. *See In re Morin*, No. PR 17-0448 (Oct. 17, 2018). And in the September 30th Order, the Commission cites both *Morin* and one additional precedent from its own rulings. *See In re Cushman*, No. PR 17-0665 (Aug. 20, 2019). The Commission claims that these precedents show that expert testimony "regarding interpretation or application of the MRPC has been consistently rejected." Commission Order, Sept. 30, 2024. Yet neither case supports that conclusion. In *Cushman*, the Commission did exclude the accused attorney's expert witness, but it "orders these exclusions as sanctions after Cushman resisted discovery attempts by failing to comply with the Commission's Order Re Discovery." *Cushman*, at 14–15 (Aug. 20, 2019). Similarly, in *Morin*, the Commission excluded the accused attorney's expert witness because that witness was prepared to testify about "the performance" of an attorney, but it was the attorney's "*role*, not her performance, that is in dispute." *Morin*, at 7 (Oct. 17, 2018).

In short, neither *Cushman* nor *Morin* suggests that the Commission routinely declines to hear expert testimony on reasonable professional behavior or the application of the MPRC. And as shown by the Supreme Court precedents discussed throughout Part II above, expert testimony like that offered by Professor Lee is both permitted under the Montana Rules of Evidence and customary in disciplinary proceedings before the Commission.

CONCLUSION

For these reasons, the Commission should grant Respondent's Rule 60(a) motion and deny ODC's motion in limine to exclude the testimony and report of Professor Thomas Lee.

DATED this 2nd day of October, 2024.

/s/ Christian B. Corrigan
CHRISTIAN B. CORRIGAN
Attorney for Respondent
Solicitor General
Office of the Attorney General
215 North Sanders
Helena, MT 59601
Phone: (404) 444-2797
Email: Christian.Corrigan@mt.gov

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing document was served upon the persons named below, addressed as follows:

Timothy B. Strauch
c/o Office of Disciplinary Counsel
P.O. Box 1099
Helena, MT 59624-1099
tstrauch@montanaodc.org

Shelly Smith
Commission on Practice
P.O. Box 203005
Helena, MT 59620-3005
shellysmith@mt.gov

DATED this 2nd day of October, 2024.

/s/ Buffy L. Ekola
BUFFY L. EKOLA