DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 31, 2018

In the Matter of:	:	
	:	
EPHRAIM C. UGWUONYE,	:	
	:	Board Docket No. 10-BD-104
Respondent.	:	Bar Docket Nos. 2005-D098,
	:	2005-D359, & 2005-D317
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 474318)	:	

REPORT AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL RESPONSIBILITY

The disciplinary proceedings involving Respondent, Ephraim C. Ugwuonye, concern four clients and his conduct in handling their matters. In its Specification of Charges, Disciplinary Counsel charged Respondent with violating ten of the D.C. Rules of Professional Conduct ("Rules") and a violation of D.C. Bar Rule XI in connection with his representation of Joe Bonner and Angela Hammie-Bonner[1], with violating eight Rules and a violation of Rule XI in connection with his representation of Gilmore C. Thompson, Sr., and with violating two Rules in connection with his representation of Arthur Lee Wyatt, Jr.

After a hearing and a briefing process, in which Respondent participated in

[1] Joe Bonner and Angela Hammie-Bonner, husband and wife, were injured in the same car accident, but separately engaged Respondent to represent them. Their cases settled separately with the insurance companies, and Respondent kept separate accounts for them in his records. Disciplinary Counsel included both of them in one count (Count 1) of the Specification of Charges and asserted that Respondent's Rule violations involved both of them. The Hearing Committee reviewed Respondent's conduct involving Ms. Hammie-Bonnie and Mr. Bonner separately, but analyzed the charged Rule violations together (*i.e.*, it made separate findings of fact but consolidated its conclusions of law).

part, an Ad Hoc Hearing Committee found that Respondent recklessly misappropriated client funds in his representation of the Bonners and of Mr. Thompson, in violation of Rule 1.15(a). The Hearing Committee also found that he violated Rule 1.5(a) in his representation of these clients, that he violated Rule 1.15(b) with respect to his representation of Mr. Thompson[2], and that he violated Rules 1.4(b) and 1.5(b) in his representation of Mr. Wyatt. Because it found that Respondent engaged in reckless misappropriation, the Hearing Committee recommended that Respondent be disbarred pursuant to *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc).

Respondent took exception to the Hearing Committee Report and Recommendation, and argues that he engaged in negligent misappropriation, rather than reckless misappropriation. He also argues that he was prejudiced by the delay in the adjudication of this matter, although much of the delay was the result of Respondent's requests, while he addressed personal legal matters in Nigeria. Disciplinary Counsel supports the Hearing Committee's Report and Recommendation.

Upon consideration of the parties' briefs and other submissions[3], as well as the entire record in this case, the Board concurs with the Hearing Committee's

[2] Rule 1.15(b) in effect during 2004-2005 has been renumbered as Rule 1.15(c) since the events in question. Like the Hearing Committee, we refer to the Rule as "1.15(b)" throughout.

[3] Respondent submitted a number of documents, as well as his brief. Respondent several times requested additional time to file a reply brief, which requests were granted, but he never filed such brief.

Oral argument was scheduled for April 5, 2018, and it was continued twice at Respondent's

factual findings as supported by substantial evidence in the record and with its conclusions of law, including the finding that Respondent's misappropriation of client funds was reckless and its recommendation that he should be disbarred. We adopt and incorporate the Hearing Committee report, which is attached hereto. We address below Respondent's argument that his misappropriation was negligent, not reckless, and his argument that he has been denied due process. Pursuant to Board Rule 13.7, we make certain additional findings of fact based on "clear and convincing" evidence in the record. These additional findings are accompanied by citations to the record.

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request, first until May 17, 2018, and then until July 12, 2018. In the order setting the July 12 argument, the Board informed Respondent that he could participate in the oral argument in person or telephonically, but he needed to indicate his intention to participate no later than July 2, 2018. Because he did not do so, the Board cancelled the oral argument in a July 5, 2018 order.

On July 11 and 23, 2018, the Board received emails sent on behalf of Respondent asserting that Respondent had been detained in Nigeria. In Respondent's July 23, 2018 filing, entitled "Emerfency [sic] Application/Notice to the Chair of the Committee," Respondent asserted that from June 24 to July 6, the Nigerian Police, Abuja Command, prevented him from leaving Nigeria and that he was arrested on July 6 on a charge of "insulting the police." He asserted that he was incarcerated from July 6 until July 16, and that these actions were taken against him "*presumably* on the instructions of the government of Nigeria with the sole purpose of preventing Respondent from attending the hearing in Washington." (Emphasis added.) Respondent provided no documentary support for these assertions, and no explanation as to why he did not meet the July 2, 2018 deadline to notify the Board of his intent to participate in oral argument. We decline to allow him additional time based on an alleged detention that occurred after he missed the July 2 deadline.

We further note that Respondent appears to misunderstand the purpose of the Board proceeding that he did not attend. There was no "hearing" scheduled; the only proceeding was to be an oral argument. Respondent has had more than sufficient opportunity to present evidence, as well as factual and legal arguments, in this matter, both to the Hearing Committee and the Board. Thus, the Board finds that Respondent has been provided ample due process and declines to delay further its report and recommendation in this matter. *See* Section III, below.

I. Disciplinary Counsel Proved by Clear and Convincing Evidence That Respondent Recklessly Misappropriated Entrusted Funds

Misappropriation is "any unauthorized use of client's funds entrusted to [a lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (internal citations omitted). Disciplinary Counsel must prove misappropriation by clear and convincing evidence, but the "proof requirement is not a demanding one, because misappropriation occurs whenever 'the balance in [the attorney's trust] account falls below the amount due to the client. Misappropriation in such situations is essentially a *per se* offense; proof of improper intent is not required.'" *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (quoting *Micheel*, 610 A.2d 231, 233 (D.C. 1992)); *see also In re Edwards,* 990 A.2d 501, 518 (D.C. 2010) (appended Board Report) (misappropriation occurs when the balance in the attorney's account falls below the amount owed to a client or third-party).

Respondent represented Mr. Bonner, Ms. Hammie-Bonner, and Mr. Thompson, each on a contingent fee basis to recover damages arising from automobile accidents. FF 4, 33. In each client matter, Disciplinary Counsel proved that Respondent misappropriated entrusted funds, by presenting clear and convincing evidence that the balance in Respondent's trust account fell below the amount held in trust for each client.

A. Factual Analysis

1. Ms. Hammie-Bonner

Between April 21 and November 26, 2004, Respondent deposited into his trust account $28,000 of insurance payments on behalf of Ms. Hammie-Bonner. Respondent did not make any payments to Ms. Hammie-Bonner or to others on her behalf, and thus, his trust account should have held $28,000 on November 26, 2004; in fact, it held only $21,842.35. DX 5, Nov. 2004 statement at 2. Indeed, no payments to Ms. Hammie-Bonner or anyone on her behalf were made from the account until January 25, 2005. However, for fifty of the sixty days between November 26, 2004 and January 25, 2005, the balance in Respondent's trust account was below $28,000. On January 25, 2005, a $4,119.52 check to a medical provider cleared the account, lowering the entrusted amount to $23,880.45. Nonetheless, between January 25, 2005 and March 24, 2005 – when Respondent disbursed most of the funds held on Ms. Hammie-Bonner's behalf – the balance in his escrow account was always less than $23,880.45. FF 17.

Respondent argues that the funds on account for Ms. Hammie-Bonner only "appear to have been less that what was due for disbursement" because "there was an agreement between Respondent and *the Bonners* to apply their funds" to a separate employment case in which Respondent represented Mr. Bonner. Resp. Br. at 8 (emphasis added). We agree with the Hearing Committee's finding that other than Respondent's "bald assertion," there is no evidence in the record that

Ms. Hammie-Bonner agreed to any such use of her entrusted funds. H.C. Rpt. at 25.

2. Mr. Bonner

Between May 11 and August 16, 2004, Respondent deposited into his trust account $16,527.46 of insurance payments on behalf of Mr. Bonner. Respondent did not make any payments to Mr. Bonner or to others on his behalf. Thus, Respondent's trust account should have held $16,527.46 on August 16, 2004, but it actually held only $13,769.80. DX 5, Aug. 2004 statement at 2. No disbursements were made to Mr. Bonner or to anyone on his behalf until December 29, 2004, but the balance in his trust account was below $16,527.46 during approximately half the period. FF 31; *see also* FF 23, 26 (identifying amounts received on behalf of Mr. Bonner and deposited into Respondent's IOLTA account).

Respondent argues that the Hearing Committee erred in concluding that Respondent should have held $16,527.16 in trust because Respondent represented Mr. Bonner in an employment matter and was entitled to $4,789.66 in fees for that separate representation. The Hearing Committee noted that, even if this was true, Respondent misappropriated Mr. Bonner's entrusted funds "on August 16, 2004, two weeks before any authorization to accept a retainer fee from Mr. Bonner." H.C. Rpt. at 24. Respondent contests this, arguing that the engagement started before August 16, but offers no evidence for his position. Resp. Br. at 8. We, however, agree with the Hearing Committee that Disciplinary Counsel proved the misappropriation by clear and convincing evidence.

More importantly, Respondent's "retainer agreement" with Mr. Bonner in the employment matter said nothing about using the proceeds of the automobile accident case to pay Respondent's fees in the employment matter. *See* DX 1-O, at 35-36. Indeed, the retainer agreement said only that an initial retainer of $1,800 "shall be paid within a reasonable time," and that if the initial retainer was exhausted, "Client agrees to replenish the retainer accordingly." *Id.* at 35.

The settlement sheet relating to the automobile accident (prepared on December 29, 2004) reflected a payment to Respondent of $4,789.66 for the employment matter. FF 29. Until that time, Respondent did not have authority to take fees for the employment matter from the proceeds of the automobile accident settlement, and thus, $16,527.16 should have remained in trust.[4]

[4] Even viewing the facts in the light most favorable to Respondent – assuming *arguendo* – that on August 16, 2004, he was entitled to deduct $4,789.66 in fees from Mr. Bonner's funds entrusted from the settlement of the automobile accident, Respondent did not maintain sufficient funds in his trust account. Specifically, even if $4,789.66 was deducted from the original entrusted fund balance of $16,527.16, he should have retained $11,737.50 in his trust account. He did not do so. Rather, the evidence shows that Respondent's trust account balance fell below $11,737.50 on August 19, August 23-26, September 7-10, September 16-24, October 7, November 8-15, November 17, November 22-24, and December 24-27 (DX 5, Aug. 2004 statement at 2, Sept. 2004 statement at 2, Oct. 2004 statement at 2, Nov. 2004 statement at 2, Dec. 2004 statement at 2). Most egregiously, on September 7, 2004, the balance was only $79.35 – $11,658.15 less than the entrusted funds that should have been in the account. Similarly, if Respondent was allowed to deduct $4,789.65 from the $28,000 he was holding for Ms. Hammie-Bonner as of November 26, 2004, he should have held $23,210.34, but the account contained only $21,842.35 on that date, and held less than $23,210.34 on November 29-30, December 3-7, 15, and 22-27, 2004. DX 5, Nov. 2004 statement at 2, Dec. 2004 statement at 2. Thus, even if the facts are viewed in the light most favorable to Respondent, his argument that the trust account balance was always equal to or more than the entrusted funds (*i.e.*, if it is assumed that he could deduct fees due him in the employment case) is unsupported by the evidence; it is simply wrong. *See* Resp. Br. at 8.

3. Mr. Thompson

On June 10, 2005, Respondent deposited into his trust account a $25,000 settlement check on behalf of Mr. Thompson. Respondent paid Mr. Thompson a total of $10,625; but did not provide him with a settlement sheet showing the disbursement of the settlement proceeds. In connection with the disciplinary investigations about his handling of Mr. Thompson's case, Respondent produced two unsigned, undated settlement sheets: one was produced to Disciplinary Counsel and the other to Maryland Bar Counsel. Neither was accurate. FF 42-45.

On October 4, 2004, Respondent signed an Authorization and Assignment ("A&A") in favor of Dr. Montague Blundon, in which he accepted Mr. Thompson's instruction to pay Dr. Blundon from the proceeds of any recovery. FF 40; DX 2J at 133-35. Respondent paid Dr. Blundon $1,221.08 on April 17, 2006, and thus, at least that amount should have remained in his trust account from June 10, 2005 – when Respondent deposited the $25,000 settlement check – until the day he paid Dr. Blundon. FF 48. However, the balance in Respondent's trust account was only $412.59 between March 6 and 22, 2006, and was only $612.59 from April 13 through April 17, 2006, when the payment was tendered. DX 7, March 2006 statement at 1, April 2006 statement at 1.

In his written submissions, Respondent asserted that he failed to pay Dr. Blundon because, based on communication between Respondent's staff and Dr. Blundon's staff, Respondent mistakenly believed that Mr. Thompson had already

paid the bill. Resp. Br. at 10. Respondent did not appear at the hearing, and thus his explanation was not subject to cross-examination.

Of note, our review of the record shows that in his response to Disciplinary Counsel, Respondent, through counsel, provided a different explanation for his non-payment of Dr. Blundon's bill. At that time, Respondent claimed he had not paid Dr. Blundon because *Mr. Thompson* "inaccurately informed our firm that he previously paid all of his medical providers and directed us to issue the settlement check solely in his name." DX 2H at 4. There is some record evidence to support this contention, as Mr. Thompson asserted in an August 15, 2005, letter to Respondent that "papers are being processed to pay Dr. Montague Blundon," among others and that the "only company left to be paid is DC Fire & EMS Services." DX 2A at 15. However, documents from Respondent's file also show that soon thereafter, on September 23, 2005, Mr. Thompson informed Respondent that Dr. Blundon was owed $1,221.08. DX 2A at 18.

Most importantly, even if Respondent believed on August 15 that Mr. Thompson had paid Dr. Blundon, any money Respondent held in trust to pay Dr. Blundon should have been paid to Mr. Thompson. As there is no evidence that Respondent paid the $1,221.08 to Mr. Thompson, this amount should have remained in the trust account until paid to Dr. Blundon or Mr. Thompson. Respondent did not do so; Respondent was not entitled to keep these funds or to use them for his personal use.[5]

[5] It is not a defense to the Rule 1.15(b) charges against Respondent that he "believed" Dr.

4. Summary

In each of Ms. Hammie-Bonner's, Mr. Bonner's, and Mr. Thompson's cases, we agree with the Hearing Committee that Disciplinary Counsel proved by clear and convincing evidence that the balance in Respondent's trust account often fell below the amount he should have held in trust for each of these clients. Thus, Respondent engaged in misappropriation of entrusted funds held for Ms. Hammie-Bonner, Mr. Bonner, and Mr. Thompson.

B. Respondent's Misappropriation was Reckless

Misappropriation can be negligent, reckless, or intentional. The Hearing Committee found that Respondent's misappropriation was reckless; Respondent asserts that it was no more than negligent.

The Court recently defined negligent misappropriation as:

> an attorney's non-intentional, non-deliberate, non-reckless misuse of entrusted funds or an attorney's non-intentional, non-deliberate, non-reckless failure to retain the proper balance of entrusted funds. Its hallmarks include a good-faith, genuine, or sincere but erroneous belief that entrusted funds have properly been paid; and an honest or inadvertent but mistaken belief that entrusted funds have been properly safeguarded.

In re Abbey, 169 A.3d 865, 872 (D.C. 2017).

Blundon had been paid. As the Hearing Committee correctly concluded:

> By signing the A&A, Respondent had an affirmative duty to make sure that Dr. Blundon was paid. He could not simply rely on the statement of his client, or a mere assumption on his part, but needed to confirm this with Dr. Blundon. Even accepting Respondent's claim that he thought Dr. Blundon had been paid, his failure to see that he was not paid for ten months violated Rule 1.15(b).

H.C. Rpt. at 35.

To prove reckless misappropriation, Disciplinary Counsel need not prove that an attorney acted intentionally, deliberately, or with improper intent. *Anderson*, 778 A.2d at 338; *In re Pleshaw*, 2 A.3d 169, 174 (D.C. 2010). Rather, to prove reckless misappropriation, Disciplinary Counsel has the burden of proving that Respondent's "misappropriation reveal[ed] an unacceptable disregard for the safety and welfare of entrusted funds." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013). Reckless misappropriation is found when Respondent "handled entrusted funds in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior for the security of the funds." *In re Pleshaw*, 2 A.3d at 173 (quotation marks omitted). In *Anderson*, 778 A.2d at 338, the Court described five "hallmarks" that "reveal an intent by the attorney 'to deal with and use funds escrowed for clients as his own' or an unacceptable disregard for the security of client funds":

> the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and the disregard of inquiries concerning the status of funds.

The Hearing Committee's recklessness finding focused on Respondent's handling of entrusted funds during the time when he held funds for Ms. Hammie-Bonner (April 21, 2004 to March 24, 2005). During this period, there were thirty-one in-branch transfers (totaling $109,709.41) from Respondent's Maryland IOLTA Account #-4851 to the firm's operating Account #-1327, and numerous checks written to Respondent, his law firm, "cash," and BB&T. FF 18. Similarly,

the trust account balances for Mr. Bonner and Mr. Thompson also dropped below the amount of entrusted funds Respondent was holding for them on numerous occasions. H.C. Rpt. at 26.

The Hearing Committee also reviewed Respondent's case files for the Bonners and bank records for his IOLTA accounts during the relevant time period. It concluded that "[c]ollectively, these records show an abysmal lack of accurate recordkeeping within the office files, inconsistent and inaccurate accountings of personal injury recoveries, inconsistent, incomplete and often illegible case file notes, and a lack of written client communications." H.C. Rpt. at 26. In concluding that Respondent engaged in *reckless* misappropriation, the Hearing Committee also found that Respondent's production of two different settlement sheets relating to Mr. Thompson's recovery, neither of which were accurate, was a relevant fact. *Id.* at 34.

Although Respondent argues that he engaged in only negligent misappropriation, he does not explain *how* the Hearing Committee erred in concluding that his conduct was negligent and not reckless. Resp. Br. 8, 11, 15. In short, he offers no reason for the Board to disagree with the Hearing Committee's recklessness conclusion, and we see none. The clear and convincing evidence establishes the existence of the following "hallmarks of recklessness": indiscriminate commingling of entrusted and personal funds, the complete failure to track settlement proceeds and the indiscriminate movement of monies between accounts. *See Anderson*, 778 A.2d at 338. In short, Respondent used his trust

account as if it were a personal account, without making the slightest effort to avoid spending funds held in trust for clients (or third-parties). We agree with the Hearing Committee that Respondent engaged in *reckless* misappropriation because his conduct reflected a conscious disregard of the safety of the funds entrusted to him.

II. The Hearing Committee's Findings of Fact are Supported by Substantial Evidence and the Conclusions of Law About the Other Rule Violations Alleged by Disciplinary Counsel are Supported by Clear and Convincing Evidence.

We agree with the Hearing Committee's findings of fact and conclusions of law and find that in addition to his violations of Rule 1.15(a) in the Bonner and Thompson matters, he also violated Rule 1.5(a) in his representation of the Bonners and Mr. Thompson, Rule 1.15(b) in his representation of Mr. Thompson and Rules 1.4(b) and 1.5(b) in his representation of Mr. Wyatt. We also agree that Disciplinary Counsel did not prove by clear and convincing evidence that Respondent violated any of the other charged Rule violations.

III. Respondent Was Not Prejudiced by the Delay Involved in This Matter and Thus His Due Process Rights Were Not Violated.

Respondent argues that he has been prejudiced by the delay in the prosecution of this matter. The Hearing Committee considered Respondent's arguments, and rejected them, as do we and as discussed below.

A. Relevant Facts

Disciplinary Counsel began its investigation of the Bonners' matter in April 2005, of the Wyatt matter in September 2005, and of the Thompson matter in

November 2005, and notified Respondent promptly in each instance. H.C. Rpt. at 40 (citing DX 1-F, 2-A, and 3-A). Disciplinary Counsel and Respondent's counsel were in contact thereafter, and Disciplinary Counsel sent him correspondence prior to the conclusion of its investigations in 2008. *Id.* Respondent was reciprocally suspended by the D.C. Court of Appeals on October 30, 2008, based on the imposition of a suspension in Maryland for unrelated disciplinary violations.[6]

Two years later, on October 27, 2010, while Respondent remained suspended, Disciplinary Counsel filed a Specification of Charges. After Respondent, through counsel, filed his answer, the matter was set for a hearing on May 10-13, 2011. In February 2011, Respondent's counsel sought to stay the proceedings because Respondent had been detained in Nigeria for "fraud-related issues." Respondent's Motion to Stay Ex B. On March 18, 2011, the Hearing Committee granted Respondent's motion, vacated the hearing dates, and set a schedule of status reports about Respondent's availability.

Respondent returned to the United States in June 2011, but his counsel argued that the proceedings should nonetheless continue to be stayed because he would be returning to Nigeria and needed to focus on his defense in the criminal charges against him there. Consent Motion to Stay and Suspend Scheduled Dates (June 21, 2011). Respondent returned to Nigeria on July 1, 2011. June 30, 2011

[6] Respondent's suspension followed his failure to respond to the Court's September 10, 2008 order to show cause why he should not be reciprocally suspended. Although his suspension was for 90-days, for purposes of reinstatement, it does not begin to run until Respondent has filed an affidavit that fully complies with the requirements of D.C. Rule XI, § 14(g), which to date he has not yet filed.

Pre-hearing Tr. at 84. In July 2011, pursuant to Board Rules 4.2 and 4.3, the hearing committee then assigned to this matter recommended to the Board Chair that it be deferred because Respondent had, to date, made six requests for a stay and it was unclear when he would be available for a hearing. Hearing Committee Two Report and Recommendation (July 11, 2011). The Board Chair granted this request and subsequent requests by Respondent's counsel. *See* Board Order of July 19, 2011 (staying the proceedings for 90 days); Board Order of November 18, 2011 (staying matter and requiring Respondent to submit status report every 90 days).

Respondent's counsel filed periodic status reports from February 16, 2012, through February 5, 2015. On May 5, 2015, Respondent's counsel instead filed a Motion to Withdraw, citing Respondent's failure to communicate with them. On June 25, 2015, not having heard from Respondent, the Board granted the motion and ordered the parties to show cause why this matter should not be scheduled for a hearing. Disciplinary Counsel had no objection to scheduling the matter for a hearing, but Respondent did not respond. On April 22, 2016, the Board vacated the deferral order, and ordered this case be scheduled for a hearing.

Because of the passage of time, a new Hearing Committee – the Ad Hoc Hearing Committee – was assigned to this matter, and it issued an order on August 4, 2016, setting a pre-hearing conference on August 16, 2016. Respondent did not respond to that order nor did he appear. At the pre-hearing conference, the case was scheduled for hearing on October 5-6, 2016. The order setting the hearing

date was emailed to Respondent, who replied by email on September 13, 2016.[7] The Hearing Committee interpreted Respondent's email as a request that the case be deferred. On September 16, 2016, Disciplinary Counsel opposed deferral because Respondent had not provided any proof of his inability to travel to the United States. On October 4, 2016, Respondent produced a description of his circumstances, asserted that his criminal trials would be concluded by mid-April 2017, and requested a six-month stay. On October 5 and 6, 2016, he provided further explanation and some documentary evidence about the Nigerian proceedings, but he did not explain why he was unable to participate in these disciplinary proceedings. Respondent also conceded that he had been in the United States at least once since the deferral order had been issued. *See* Hearing Committee Recommendation of Deferral (Oct. 7, 2016).

Pursuant to Board Rules 4.1 and 4.2, the Hearing Committee Chair recommended that the matter be deferred for six months, and that Respondent be ordered to file a status report by March 31, 2017, regarding his criminal cases and his ability to travel to the United States. On October 11, 2016, the Board Chair accepted the Hearing Committee Chair's recommendation that the case be deferred for six months, but ordered that a pre-hearing conference be held within thirty days

[7] The Office of the Executive Attorney and Disciplinary Counsel went to extraordinary lengths to ensure that Respondent received all orders and pleadings filed after Respondent's counsel withdrew. All orders were served on Respondent by email sent to the email address on file with the D.C. Bar, eu@eculaw.com, and/or an address that Respondent used in communication with the Office of the Executive Attorney, eculaw1@gmail.com.

to schedule a hearing in May or June, 2017 – after the Nigerian criminal trials were expected to have concluded. *See* Board Order (Oct. 11, 2016).

In the order setting the pre-hearing conference, the Hearing Committee Chair allowed Disciplinary Counsel and Respondent to participate in the pre-hearing conference by telephone. The pre-hearing conference was held on November 10, 2016, but Respondent did not attend either in person or by telephone. The hearing was scheduled for May 16, 2017, and dates were set for Respondent to submit proposed exhibits, a list of witnesses, and any objections to Disciplinary Counsel's proposed exhibits. That order also included provisions for the presentation of testimony remotely. It encouraged the parties to confer in advance of the hearing about any issues that might arise or be presented. Finally, the order required that any request for a continuance had to be filed at least seven days in advance of the hearing. The November 10, 2016 order was sent to Respondent at the email addresses identified above, and Disciplinary Counsel was directed to forward it to Respondent via Facebook. *See* Hearing Committee Order (Nov. 10, 2016).

Respondent did not respond to the November 10, 2016, order until May 15, 2017 – one day before the hearing was scheduled to begin – when he emailed a continuance motion to the Office of the Executive Attorney, citing the pendency of the Nigerian criminal actions. Disciplinary Counsel opposed a further continuance. The Hearing Committee denied the motion, and the hearing was held on May 16, 2017. *See* May 16, 2017 Hearing Tr. at 3-6.

B. Analysis of Respondent's Assertions of Prejudice

Respondent argues that he was prejudiced by the delay in Disciplinary Counsel's investigation of this matter. *See* Resp. Br. at 2. He claims that the delay should be analyzed as two separate periods and causes: (1) the period between Disciplinary Counsel's commencement of the investigations and its filing of the Specification of Charges (2005-2010)[8]; and (2) the period between the commencement of the proceedings and the present (2011-2018).

The Court of Appeals has held that "undue delay in prosecution is not in itself a proper ground for dismissal of charges of attorney misconduct." *In re Williams,* 513 A.2d 793, 796 (D.C. 1986). The Court recognized that "[a] delay coupled with actual prejudice could result in a due process violation" that could compel the Court to conclude that misconduct had not been shown. *Id.* at 797.

Respondent attributes the first period of delay to Disciplinary Counsel, but the only argument Respondent makes as to how he was prejudiced by Disciplinary Counsel's purported delay is that it "[kept] his life in suspense." Resp. H.C. Br. at 8. Such personal discomfort does not affect Respondent's due process rights. There is no other prejudice to him apparent on the record. In the absence of any evidence of actual prejudice, there is no basis to conclude that Respondent was denied due process as a result of the time it took for Disciplinary Counsel to complete its investigation.

[8] We note that Respondent did not make any such claim in his Answer.

Although virtually every request for an extension of time or a continuance was made by or on behalf of Respondent during the second period in which delay occurred, Respondent argues that this delay was beyond his control. Resp. Br. at 2. He argues that the case should have been dismissed because of the actions of the Nigerian government. Resp. Br. at 2-4. Respondent argues that he was denied due process during this time, in that he (a) lost communication with his lawyers in Washington, who had some vital records and files needed for Respondent's defense, (b) lost contact with his own law firm in the United States and his staff dispersed to the four corners of the United States due to his prolonged absence from the United States, and (c) lost his files and records. *Id.* at 3. However, during the investigative stage of the case, Respondent produced to Disciplinary Counsel his case file for Ms. Hammie-Bonner, Mr. Bonner, and Mr. Thompson, as well as his records regarding the handling of entrusted funds during the relevant time-period. *See* DX 1-F through 1-O, 2-A through 2-J, DX 4-7.[9] Thus, Respondent's records were available for his review at the Office of Disciplinary Counsel pursuant to Board Rule 3.1 (a respondent "shall have access to all material in the files of Disciplinary Counsel pertaining to the pending charges that are neither privileged nor the work product of the Office of Disciplinary Counsel."). They were also marked as Disciplinary Counsel's exhibits, which were provided to Respondent. Yet, Respondent does not appear to have made any effort to review

[9] In response to Mr. Wyatt's disciplinary complaint, Respondent asserted that Mr. Wyatt was not his client and that when he declined the representation, Respondent returned to Mr. Wyatt the documents Mr. Wyatt had previously provided. DX 3-B at 7.

these documents prior to the hearing. Further, he admits that he was in the United States on at least one occasion during this period, but apparently made no effort to retrieve any files from his former counsel or to locate any witnesses. Indeed, he offers no evidence from his former counsel to support the claim that they had or have vital records that he needed for his defense, or that he attempted, but could not locate staff members, who he asserts would have provided relevant testimony. Thus, there is no basis to conclude that Respondent was denied due process as a result of the delay that he argues resulted from the conduct of the Nigerian authorities.

Respondent argues that he "would have been able to explain [the activity in the Bonners' accounts] better if he had had the full opportunity to present secondary records to the Board at hearing." Resp. Br. at 9. He provides no evidence as to what records he would have produced, and no explanation why, in advance of the hearing, he did not submit any such records as proposed exhibits, as required to do by the Hearing Committee. *See* H.C. Order (Jan. 26, 2011); H.C. Order (Nov. 10, 2016).

Respondent next argues that due to his detention in Nigeria, he "did not receive many of the processes filed by [Disciplinary Counsel] until he came back to the United States in August 2017," three months after the hearing. Respondent does not say what "processes" he did not receive, or what he would have done differently had he received them. As discussed above, the record shows that Respondent received notice of the pre-hearing conferences convened to schedule

the hearing, and the order scheduling the hearing itself. Respondent did not participate in the pre-hearing conferences (either in person or remotely, although offered the opportunity to do so), did not propose any evidence for the hearing, did not communicate with Disciplinary Counsel about the conduct of hearing, and did not seek a hearing continuance until the eve of the hearing. Thus, there is no evidence that Respondent was prejudiced by the failure to receive "processes."

Finally, Respondent argues that he was denied due process because he could not "put forward his best case or evidence either directly exonerating him or contradicting [Disciplinary Counsel's] evidence and allegations . . . ." Resp. Br. at 6. He provides no specifics. Further, as discussed above, viewing the facts in the light most favorable to him, Respondent misappropriated Mr. Bonner's and Ms. Hammie-Bonner's money even if he was allowed to deduct the employment matter fees from the entrusted funds from the automobile accident, and he misappropriated Mr. Thompson's money even if he thought Dr. Blundon had been paid, in which case the amount held in trust to pay the doctor should have been held in trust for Mr. Thompson.

IV. The Appropriate Sanction is Disbarment

As the Court noted in *Pleshaw,* 2 A.3d at 173, "[i]n virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence." Disbarment is generally required when a lawyer engages in reckless or intentional misappropriation. *Addams*, 579 A.2d at 191. A lawyer who has engaged in

reckless misappropriation can avoid disbarment only if he can demonstrate extraordinary circumstances. *Id.* We note that the Court has deviated from the presumptive sanction of disbarment in non-negligent misappropriation cases only when the misappropriation was caused by a disabling condition (*Kersey* mitigation), and – in one instance – when the misappropriation was "motivated *solely* by a desire to protect his ward's interest." *See In re Hewett*, 11 A.3d 279, 289 (D.C. 2011).

Respondent has proffered a number of points in "mitigation." Resp. Br. at 11-14. In sum, these include his assertion that he would have attempted to reach a different result in this case, that he has risen from modest circumstances to an important role in world affairs, that he is the victim of political persecution in Nigeria, that he has suffered substantially from his treatment by Nigerian authorities, that disbarment will have an adverse effect on his Nigerian cases and on him, and that he is unlikely to engage in the conduct in these cases in the future. *Id.* We have considered all the the mitigation factors Respondent cites, but do not find that they justify a finding of extraordinary circumstances needed to justify a departure from the *Addams* rule. *See, e.g., Thomas-Pinkney*, 840 A.2d 700, 701 (D.C. 2004) (imposing disbarment for reckless misappropriation despite the respondent's "very considerable service to her community, for which she was praised both by the Hearing Committee and by the Board"). Thus, we find that disbarment is the appropriate sanction.[10]

[10] In Respondent's "Plea in Mitigation" (Resp. Br. at 11-14), he discusses factors that are

Conclusion

For the reasons set forth above, the Board agrees with the Hearing Committee that Respondent violated Rules 1.4(b), 1.5(a), 1.5(b), 1.15(a), and 1.15(b), and that he should be disbarred because he engaged in reckless misappropriation.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 
Mary Lou Soller

All Board members concur in this report and recommendation.

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generally relevant to the imposition of sanctions, but Respondent fails to recognize that those factors are not relevant in a reckless or intentional misappropriation case where *Addams* dictates the sanction analysis.

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
EPHRAIM C. UGWUONYE,	:	
	:	
Respondent.	:	Board Docket No. 10-BD-104
	:	Bar Docket Nos. 2005-D098 *et al.*
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 474318)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

Respondent, Ephraim C. Ugwuonye, is charged with violating Rules 1.3(c), 1.4, 1.5(a), 1.15(a), 1.15(b), 8.1, 8.4(b), 8.4(c), 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his representation of four clients between 2003 and 2005.[1] This Hearing Committee finds clear and convincing evidence of several of the violations charged by Disciplinary Counsel and finds that Respondent engaged in reckless misappropriation. The Hearing Committee recommends that Respondent be disbarred.

I. PROCEDURAL BACKGROUND

Disciplinary Counsel served Respondent with a Specification of Charges on October 27, 2010. Respondent, through counsel, filed an answer on December 14, 2010. In July 2011, this matter was stayed while Respondent defended criminal charges in Nigeria. *See* Board Order of July 19, 2011. On April 22, 2016, the case

[1] The Specification of Charges also asserted violations of Rules 1.2(a), 1.4(c) and D.C. Bar Rule XI, § 19(f). In the post-hearing brief, Disciplinary Counsel abandoned these charges.

resumed after Respondent failed to file a response to an order to show cause why the stay should not be lifted. By this time, Respondent's counsel had withdrawn and he has since proceeded *pro se*. After holding two pre-hearings and accommodating other requests for delay, the Hearing Committee held a hearing on May 16, 2017. Disciplinary Counsel was represented at the hearing by Traci M. Tait, Esquire. Respondent did not attend the hearing.

Prior to and during the hearing, Disciplinary Counsel submitted Exhibits ("DX") A through D, 1, 2A through 2K, and 3 through 8. All of Disciplinary Counsel's exhibits were received into evidence. Transcript of Proceedings ("Tr.") 78-80. During the hearing, Disciplinary Counsel called one witness, Charles M. Anderson, an investigator with the Office of Disciplinary Counsel, who summarized bank records (exhibits from the record) that document the amount of money in Respondent's trust accounts during the representation of Respondent's four clients. Tr. 21-72.

After the close of the hearing, Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanction. On September 11, 2017, Respondent filed a response brief and three days later filed a supplemental response brief. On September 21, 2017, Disciplinary Counsel filed a reply brief.

Disciplinary Counsel offered what appears to be its entire investigatory files for these three complaints.[2] For his part, Respondent participated in these

[2] Disciplinary Counsel entered the Affidavit of Gilmore C. Thompson into the record. DX 2-K.

proceedings up to a point, but failed to attend the hearing despite numerous delays and an opportunity to appear remotely. Thus, the Hearing Committee has relied exclusively on the voluminous documentary evidence to find clear and convincing evidence of the facts relevant to the charges. We have sought to avoid assuming facts or characterizing evidence that is not clear on the face of the documents. The result is a cold record with many questions left unanswered. With this limitation in mind, the Hearing Committee makes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on September 14, 2001, and assigned Bar number 474318. Specification of Charges, ¶ 1; Answer to Specification of Charges, ¶ 1.

2. Between at least 2003-2005, Respondent practiced law in the law firm of ECU Associates, P.C., with offices in the District of Columbia and Maryland. DX 1-G, at 1-2. "ECU" are Respondent's initials. According to Respondent's initial response to the first inquiry from Disciplinary Counsel, he was the managing attorney of ECU Associates which employed "over 14 professional staff." *Id* at 1. His practice appears to have been a mixture of civil litigation, including work representing individual clients in personal injury cases.

3. During the time period at issue in this matter, Respondent's firm maintained two Interest on Lawyer Trust Accounts ("IOLTA") with Business Bank

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While the Hearing Committee admitted this exhibit, we do not accord it the same weight as live testimony.

& Trust Co. ("BB&T"): (1) IOLTA account #-4851 for work conducted in Maryland (DX 1-L at 2; DX 4), and (2) IOLTA account #-3145 for work conducted in the District of Columbia (DX 2-H at 3; DX 7). The record reflects that during this same time, Respondent's firm maintained at least five other checking accounts with BB&T. *See*, *e.g.*, DX 7 (5/05) at 2 (bank statement dated May 31, 2005 showing in-branch transfers to Account #-1327 and Account #-3765); DX 4 (12/03) at 2 (bank statement dated December 31, 2003, showing in-branch transfer to Account #-1351); DX 7 (-3609) at 1 (signature card for ECU Associates Expense Accounts #-3609); and DX 7 (5/05) at 1 (bank statement showing in-branch transfer to Account #-3765). Respondent also maintained an account at Bank of America. DX 1-J at 6, 8 (checks written on Account #-2321, not identified as a trust account, to cover costs to obtain medical records); Disciplinary Counsel submitted complete bank records (including monthly statements and copies of all checks paid, other withdrawals/debits, and deposits and other credits) for the Maryland IOLTA Account #-4851 between December 1, 2003 and December 29, 2006, and for the DC IOLTA Account #-3145 between May 1, 2005 and December 29, 2006. Tr. 39-41; DX 4-7.

Count 1 (Joe Bonner and Angela Hammie-Bonner; BDN 2005-D098)

4. On December 2, 2003, Joe Bonner and Angela Hammie-Bonner, residents of Silver Spring, Maryland, were involved in an automobile accident while trying to merge onto US 1 North from Route 193 near College Park, Maryland. DX 1-G at 9. Their car was damaged and both of them sustained

injuries. *Id.* They were able to drive to Adventist Hospital where they were seen in the emergency room and thereafter both began receiving medical treatment. DX 1-J at 1-3, DX 1-G at 11.

5. On December 8, 2003, the Bonners entered into individual retainer agreements with Respondent to represent them on a contingent fee basis to recover damages arising from the automobile accident. Specification of Charges, ¶ 3; Answer to Specification of Charges, ¶ 3; DX 1-G at 7-8; DX 1-J at 367-68. The retainer agreements provided for Respondent's firm to receive a contingency fee "from the proceeds of recovery" of "33% (or 1/3) if [the case] settled without suit," or 45% if suit were filed. *Id.* The agreements required the Bonners to pay costs and expenses that "could include, but may not be limited to, investigative charges, court and discovery costs, expert witness fees and charges for securing records." DX 1-G at 7-8; DX 1-J at 367-68.

Angela Hammie-Bonner

6. During the six months following the accident, Ms. Hammie-Bonner incurred $9,290.62 in medical bills:

- Washington Adventist Hospital, for services on Dec. 2, 2003: $85.37 (DX 1-J at 89).
- Emergency Medicine Associates, for services on Dec. 2, 2003: $175.00 (DX 1-J at 90).
- Maryland Orthopedics, P.A., for services between Dec. 8, 2003 and Jan. 12, 2004: $3,725.25 (DX 1-J at 224-25).
- Back Pain & Headache Centers, for services between Dec. 4, 2003 and June 18, 2004: $5,305.00 (DX 1-J at 99-101).

7. Respondent executed an Authorization and Assignment ("A&A") for Maryland Orthopedics, promising to notify it and pay its bills out of the proceeds of any settlement. DX 1-J at 197, 198.

8. In a letter dated November 10, 2004, Respondent sought Personal Injury Protection ("PIP") coverage from GEICO, Ms. Hammie-Bonner's automobile insurer, for her $9,290.62 in medical bills and another $12,151.85 in lost wages for a total claim of $21,442.47. DX 1-J at 71. In a separate letter, also dated November 10, 2004, Respondent made a demand on State Farm Insurance, the other driver's insurer, for the same amount of medical bills and lost wages, plus $28,000 in pain and suffering – a demand totaling $49,442.47. DX 1-J at 163, 169.

9. In a letter dated November 18, 2004, GEICO informed Respondent that his client had already exhausted her PIP coverage benefits of $7,500. DX 1-J at 67-68. These PIP payments were made directly to Respondent for his client and deposited into his Maryland IOLTA Account #-4851 as follows:

- $2,748.52 for payment of Maryland Orthopedics, dated April 7, 2004, and credited on April 21, 2004. DX 4 (4/04) at 2, 66.

- $260.37 for payment of Emergency Medical Associates and Washington Adventist Hospital, dated June 10, 2004 and credited on June 15, 2004. DX 4 (6/04) at 2, 46.

- $4,119.52 for payment of the Back Pain & Headache Centers, dated Aug. 27, 2004 and credited on September 2, 2004. DX 5 (9/04) at 2, 32.

- $371.59 for payment of lost wages, dated November 15, 2004 and credited on November 19, 2004. DX 5 (11/04) at 2, 67, 69. This check included the notation "PIP EXHAUSTED."

10. On November 24, 2004, Respondent and a representative of State Farm negotiated Ms. Hammie-Bonner's claim against the other driver from the initial demand of $49,442.47 to $20,500. DX 1-J at 10, 51. Respondent's case file and case notes do not reflect this negotiation or any communication with his client. DX 1-J at 44-48.

11. On the same day, November 24, 2004, State Farm issued a check in the amount of $20,500 in settlement of Ms. Hammie-Bonner's personal injury suit. DX 5 (11/04) at 73. The cover letter enclosed "a general release and draft in the amount of $20,500.00," and asks Respondent to "have your client date and sign the release . . . prior to negotiating the draft." DX 1-J, at 51. The check was made payable to "ANGELA HAMMIE BONNER & EPHRAIM UGWUONYE, HER ATTORNEY." *Id.* at 10. Although the reverse side states that it must be endorsed by all payees, the check was signed by "Ecu Associates, P.C." on behalf of Ms. Hammie-Bonner. DX 5 at 73. The check was credited to Respondent's Maryland IOLTA Account #-4851 on November 26, 2004. DX 5 (11/04) at 2.

12. The parties dispute, and the record is unclear, as to when Respondent first notified Ms. Hammie-Bonner of her settlement. However, the record demonstrates that Respondent sent a letter to Ms. Hammie-Bonner, dated March 3, 2005, transmitting the State Farm release and requesting that she sign it. DX 1-J at 53. The letter provides no information regarding the status of her settlement. *Id.* According to Respondent's case file notes, his office mailed the signed release to

State Farm on March 15, 2005. DX 1-J at 45. The case file does not contain a signed copy of the release.

13. On March 24, 2005, Ms. Hammie-Bonner signed Respondent's disbursement sheet for her settlement with the other driver. DX 1-G at 24. The disbursement sheet includes settlement amounts of $20,500 for liability and $7,500 for PIP. It also lists disbursements of $7,833.33 in attorney fees and costs, and a $150 "PIP fee." *Id.* The disbursement sheet also deducts $8,105.14 in medical bills, which includes all of the charges listed in Paragraph 6 above, with Back Pain charge discounted to the $4,119.52 paid in January. Ms. Hammie-Bonner acknowledged her receipt of $11,911.53, the remainder of her settlement after deducting fees, costs and the listed medical bills. *Id.*

14. Respondent's file contains a "Computation of Costs for Client" sheet in Ms. Hammie-Bonner's case. DX 1-J at 5, 22. The record does not indicate whether Respondent provided a copy of this computation to his client. This sheet reflected $1,081.95 in costs, including: $55 for "Printing and Packaging;" $475 for Williams Investigative Services for photographs of the accident scene, defendant interviews, and research on the defendants' driving records and accident histories; and $190.50 for more than 21 hours of telephone calls at $.15/minute. *Id.* at 22.

15. Also on March 24, 2005, Respondent issued a check on his Maryland IOLTA Account #-4851 payable to Angela Hammie-Bonner in the amount of $11,911.53. DX 6 (3/05) at 16. The check was credited against Respondent's account on March 28, 2005. DX 6 (3/05) at 1.

16. Respondent wrote checks for payment of Ms. Hammie-Bonner's medical bills from his Maryland IOLTA Account #-4851 as follows:

- $4,119.52 for payment of the Back Pain & Headache Centers, dated Jan. 12, 2005 and credited on Jan. 25, 2005. DX 1-J at 11; DX 6 (1/05) at 1, 12.

- $3,725.25 for payment of Maryland Orthopedics, dated March 24, 2005 and credited on May 2, 2005. DX 1-J at 20; DX 6 (5/05) at 1, 5.

- $85.37 for payment of Washington Adventist Hospital, dated March 24, 2005 and credited on May 6, 2005. DX 1-J, at 16; DX 6, (5/05) at 1, 4.

- $175 for payment of Emergency Medical Associates, dated March 24, 2005. DX 1-J at 18. Respondent's records for his Maryland IOLTA account between March 2005 and December 2006 does not identify this check as being credited. DX 6; DX 1-O at 2-3.

17. As of November 26, 2004, Respondent had received and credited to his Maryland IOLTA Account #-4851 a total of $28,000 in settlement checks from GEICO and State Farm on behalf of Ms. Hammie-Bonner. Prior to January 25, 2005 (when the $4,119.52 check to Back Pain & Headache Centers cleared his account), Respondent should have maintained a balance of $28,000 in his Maryland IOLTA for Ms. Hammie-Bonner. From January 25, 2005 to March 28, 2005 (when Ms. Hammie-Bonner's check cleared his account), Respondent should have maintained a balance of at least $23,880.48 in this account. Yet the balance of Respondent's Maryland IOLTA Account #-4851 did not exceed $28,000 on November 26, 2004, and exceeded $28,000 for only ten days prior to January 25, 2005. DX 5 (11/04) at 2; DX 5 (12/04) at 2; DX 6 (1/05) at 2. Prior to March 28,

2005, Respondent's Maryland IOLTA account never exceeded $23,880.48. DX 6 (1/05) at 2; DX 6 (2/05) at 1; DX 6 (3/05) at 2.

18. Respondent's bank statements for his Maryland IOLTA Account #-4851 do not identify any transfers to his other IOLTA Account between the date he first received entrusted funds for Ms. Hammie-Bonner, April 21, 2004, and the date he disbursed most of the funds on her behalf, March 24, 2005. There are, however, 31 in-branch transfers from the Maryland IOLTA Account #-4851 to the firm's operating Account #-1327 during this time period, totaling $109,709.41. *See, e.g.*, DX 4 (4/04) at 2, (5/04) at 2, (6/04) at 1; DX 5 (07/04) at 1, (10/04) at 1-2, (11/04) at 1-2, (12/04) at 1; DX 6 (01/05) at 1-2; (02/05) at 1. During this same time period, there are also numerous checks written on Respondent's Maryland IOLTA account in favor of "ECU Associates," "Ephraim Ugwuonye," "BB&T," and "BB&T/cash." *See*, *e.g.*, DX 4 (4/04), at 5, 8, 9, 13-15, 19, 23, 26, 28-30, 32, 33, 35, 36; DX 4 (6/04) at 17-19, 25, 27.

19. On March 1, 2005, Ms. Hammie-Bonner submitted a written complaint to Disciplinary Counsel regarding Respondent. DX 1-E. Disciplinary Counsel subpoenaed Respondent's entire case files for both Ms. Hammie-Bonner and Joe Bonner. DX (1-I) at 2; Tr. at 74. Those files are contained in DX 1-J at 44-349 (Ms. Hammie-Bonner) and DX 1-J at 350-524.

Joe Bonner

20. During the three months after his automobile accident, Mr. Bonner incurred $5,186.93 in medical bills:

- Washington Adventist Hospital, for services on Dec. 2, 2003: $85.55. DX 1-J at 445.
- Emergency Medicine Associates, for services on Dec. 2, 2003: $175.00. DX 1-J at 470.
- Maryland Orthopedics, for services between Dec. 8, 2003 and Jan. 12, 2004: $1,721.38. DX 1-J at 481.
- Back Pain & Headache Centers, for services between Dec. 4, 2003 through Feb. 12, 2004: $3,205.00. DX 1-J at 455-57.

21. Respondent executed an Authorization and Assignment, maintained in his client file, promising to notify and pay Maryland Orthopedics out of the proceeds of any settlement. DX 1-J at 509, 510.

22. In a letter dated March 31, 2004, Respondent sought PIP coverage from GEICO, his automobile insurer, for coverage of $5,186.93 in medical bills and $5,530.88 in lost wages, totaling $10,717.81. DX 1-J, at 382-83. In a separate letter, also dated March 31, 2004, Respondent made a demand of $26,717.81 on State Farm Insurance, the other driver's insurer. DX 1-J, at 436. This amount included the same medical bills and lost wages, plus $16,000 in pain and suffering.

23. Respondent received five checks from GEICO totaling $7,500 to exhaust Mr. Bonner's PIP coverage. Respondent sent two of these checks directly to the relevant medical providers and deposited three into his Maryland IOLTA Account #-4851, as follows:

- $978.02 made payable to Maryland Orthopedics, issued on April 6, 2004 and received by Respondent on April 8, 2004, but not placed in his Maryland IOLTA account. DX 1-J at 354; DX 1-O at 28; DX 4 (4/04) at 2. This amount reflected a reduction in charges made by GEICO. DX 1-J, at 380-81. Respondent's case file notes state that this check was sent to Maryland Orthopedics by letter on April 13, 2004. DX 1-J at 354.

- $260.55 for payment of Washington Adventist Hospital and Emergency Medicine Associates, dated May 21, 2004 and credited in Respondent's Maryland IOLTA Account #-4851 on May 26, 2004. DX 4 (5/04) at 2, 86.

- $2,994.52 made payable to David Kopelove, Back Pain and Headache Centers, issued on May 27, 2004, but not placed in Respondent's Maryland IOLTA account. DX 1-O at 29. This amount reflected a reduction in charges made by GEICO. DX 1-J at 376-77. Respondent's case file notes state that this check was sent to "Back Pain w/ Explanation" by letter on June 2, 2004. DX 1-J at 353.

- $366.38 made payable to Maryland Orthopedics, dated August 11, 2004 and credited in Respondent's Maryland IOLTA Account #-4851 on August 23, 2004. DX 1-O at 30; DX 5 (8/04) at 2, 49.

- $2,900.53 made payable to Joe L. Bonner for payment of lost wages, issued August 12, 2004 and credited in Respondent's Maryland IOLTA Account #-4851 on August 16, 2004. DX 1-O, at 31; DX 5 (8/04) at 1, 40. The memo on the check notes that not all lost wages were paid, but only "TO EXHAUST."

24. Disciplinary Counsel sought to obtain the accounting of PIP payments directly from Respondent, but was unsuccessful. Specifically, Disciplinary Counsel asked Respondent to identify the bank account "into which you deposited each PIP check you received" on behalf of Mr. Bonner. DX 1-N at 2. In response, Respondent misstated three times that he had never deposited any of Mr. Bonner's PIP checks into his IOLTA account. DX 1-O at 4, 5.

25. On May 6, 2004, Respondent spoke with a representative of State Farm by telephone and exchanged settlement proposals. DX 1-J at 434. On May 10, the parties agreed to settle Mr. Bonner's claim for $13,000. DX 1-J at 433.

26. In a letter dated May 10, 2004, State Farm issued a check in the amount of $13,000 in settlement of Mr. Bonner's personal injury suit. DX 4 (5/04) at 69. The cover letter enclosed "a general release and draft in the amount of $13,000.00" and asked Respondent to "have your client date and sign the release . . . prior to negotiating the draft." DX 1-J at 433. The check was made payable to "JOE BONNER & EPHRAIM UGWUONYE, HIS ATTORNEY." DX 4 (5/04) at 69. Although the reverse side states that it must be endorsed by all payees, the check appears to have been signed for Mr. Bonner by "Ecu Associates, P.C." *Id.* The check was credited to Respondent's Maryland IOLTA Account #-4851 on May 11, 2004. DX 4 (5/04) at 2, 67. Mr. Bonner signed the release form and Respondent returned it to State Farm by letter dated May 25, 2004. DX 1-J at 427-28.

27. On December 29, 2004, Mr. Bonner signed Respondent's disbursement sheet for his settlement with the other driver. DX 1-J at 37. The disbursement sheet includes settlement amounts of $13,000 for liability and $7,239.45 for PIP. The disbursement sheet fails to include the PIP payment from GEICO for $260.55 to cover his medical bills incurred from the Washington Adventist Hospital and Emergency Medicine Associates. *Id.* The record does not

explain why it would take Respondent more than seven months to disburse the settlement funds to Mr. Bonner.

28. The disbursement sheet for Mr. Bonner's settlement lists disbursements of:

- $4,433.33 in attorney fees, being one-third of the $13,000 settlement;
- $1,200 in unspecified costs;
- $150 as a "PIP fee"; and
- $5,186.93 in medical bills, without any discount applied.

29. On December 29, 2004, Mr. Bonner acknowledged his receipt of the resulting remainder of his settlement of $9,449.19. *Id.* In a handwritten notation at the bottom of the disbursement sheet, Respondent claimed an additional $4,789.66 as payment of fees Mr. Bonner purportedly owed for his work in an unrelated representation. *Id.* ($4,789.66 deducted from Mr. Bonner's share of settlement "represents Mr. Bonner's payment of ECU Bill for services relating to [an unrelated] complaint."). *See* FF 32. As a result, the check Mr. Bonner received and signed for was for $4,659.53. DX 5 (12/04) at 13. The memo on that check states "Full/Final Settlement DOA: 12/02/03 (less ECU bill for C. Short case)."

30. Respondent's case file contains a "Computation of Costs for Client" sheet that delineated: $55 for "Printing and Packaging;" $575.05 for Williams Investigative Services for photographs of the accident scene, defendant interviews,

and research on the defendant's driving records and accident histories; and, $168 for more than 18 hours of telephone calls at $.15/minute. *See* DX 1-J at 5, 524. It is disputed and the record is unclear whether Respondent ever provided this computation sheet to his client.

31. Respondent deposited a total of $16,527.46 in his Maryland IOLTA Account #-4851 on behalf of Mr. Bonner between May 11, 2004 and August 16, 2004. The only payment made from that account on behalf of Mr. Bonner is his settlement check for $4,659.53, credited on the Maryland IOLTA Account #-4851 on December 29, 2004. Thus, between August 16 and December 29, 2004, Respondent should have maintained a balance of $16,527.46 in his Maryland IOLTA for Mr. Bonner. Yet the balance of Respondent's Maryland IOLTA Account #-4851 was not over $16,527.46 on August 16, 2004 and exceeded that amount only about half of the time prior to December 29, 2004. DX 5 (8/04) at 2, (9/04) at 2, (10/04) at 2; (11/04) at 2, (12/04) at 2.

32. Shortly after settling Mr. Bonner's personal injury claim, he retained Respondent to represent him in an employment matter. Respondent met with Mr. Bonner on September 1, 2004 to discuss this new matter and signed a retainer agreement. DX 1-G at 2; DX 1-O at 32, 35-36. The retainer agreement summarized the scope of this new matter, for which Mr. Bonner agreed to pay an initial retainer fee of $1,850, and agreed to be billed at $250/hour for Respondent's time, $200/hour for associate counsel, and $100/hour for paralegal time. DX 1-O at 35-36. Respondent produced to Disciplinary Counsel a billing statement for this

representation detailing his work between September 1 and October 16, 2004, totaling $4,789.66 in fees and costs. *Id.* at 32-34.

Count 2 (Gilmore C. Thompson; BDN 2005-D359)

33. Gilmore C. Thompson, Sr., a resident of Germantown, Maryland, was involved in an automobile accident in the District of Columbia on the evening of Thursday, July 15, 2004. DX 2-D at 17; DX 2-J at 42-44. Mr. Thompson was injured in the accident and transported by ambulance to Veterans Hospital and later released. *Id.*

34. The following day, Mr. Thompson entered into Respondent's form "Retainer and Contingency Agreement" in which he retained "ECU Associates, P.C." to "represent [him] in [his] claim for damages against" the driver of the other vehicle "resulting from an accident or incident which occurred on or about 7-15-04." DX 2-D at 13. The retainer agreement provided for Respondent's firm to receive a contingency fee "from the proceeds of recovery" of 30% if the case settled without suit, or 35% if suit were filed. *Id*. It obligated Mr. Thompson to pay costs and expenses that "could include, but may not be limited to, investigative charges, court and discovery costs, expert witness fees and charges for securing records." *Id.*

Property Damage Claim

35. Mr. Thompson relied on Respondent to negotiate his property damage claim. Respondent initially sought to avoid being drawn into dealing with his client's vehicle repair and rental issues, asserting that the retainer agreement

limited the scope of representation to his bodily injury claims only. DX 2-J at 93. When Mr. Thompson disputed this limitation, Respondent acquiesced to his interpretation of the retainer agreement, but noted that his fees would be taken out of both the bodily injury and property damage claims. DX 2-J at 92.

36. Mr. Thompson's van suffered considerable damage in the accident. It was towed to a shop where it received $6,863.51 in repairs. DX 2-J at 77. While it was being repaired, Mr. Thompson needed to rent a replacement van that cost $1,840.26. DX J2 at 71-72. These costs were born initially by Mr. Thompson and he provided detailed accounting of his costs to Respondent. To defray some of these costs and keep Mr. Thompson from defaulting on his mortgage, Respondent advanced his client $700 towards the rental fees, to be repaid from the proceeds of the property damage settlement. DX 2-J at 14, 17. Although Mr. Thompson states that Respondent's firm advanced him two checks of $350 each, the record does not include copies of these checks, and it is unclear from which account they were drawn other than it was not the Maryland IOLTA Account #-4185. *See* DX 5 (8/04) at 1.

37. On August 3, 2004, the other driver's insurance company, The Hartford Insurance Company, issued a check for $500 directly to Mr. Thompson to reimburse him for his collision deductible. DX 2-I at 1. On September 13, 2004, The Hartford paid Mr. Thompson's automobile insurer, GEICO, a total of $7,240.09 as a subrogation payment for damage to his van. *Id*. On that same day, The Hartford sent Respondent a check in the amount of $1,400.01 to reimburse

Mr. Thompson for his automobile rental expenses. *Id*. Respondent received and deposited this check into his Maryland IOLTA Account #-4851, where it was credited to the account on September 17, 2004. DX 5 (9/04) at 2, 49. On November 3, 2004, The Hartford made its last property damage payment on Mr. Thompson's accident when it issued GEICO a supplement in the amount of $200. DX 2-I at 1. In sum, The Hartford paid out $9,340.10 on Mr. Thompson's property damage claim. DX 2-I at 1.

38. On September 23, 2004, Respondent issued a check to "Gilmore Thompson" in the amount of $700, drawn on his Maryland IOLTA Account #-4851 and credited the next day. DX 2-J at 95; DX 5 (9/04) at 1, 22. On the memorandum line appeared the handwritten text: "Property Damage settlement of $1,400.00." *Id*. Mr. Thompson received this check and understood it as "a partial payment." DX 2-K at ¶ 3 (Affidavit of Gilmore C. Thompson). "Respondent did not tell [Mr. Thompson] he would take a fee to process claims associated with reimbursement for [Mr. Thompson's] rental car or that his fee for settling the case would be more than 30% of [Mr. Thompson's] bodily injury damages.." *Id.* at ¶ 4.

Personal Injury Claim

39. Mr. Thompson suffered bodily injury in the accident and incurred medical bills over the next seven months totaling $12,787.61 as the result of those injuries.

- D.C. Fire and EMS, for services on July 15, 2004: $471 (DX 2-J at 241-43).

- LaVida Medical & Chiropractic Center, for services between July 16, 2004 and October 20, 2004: $3,950 (DX 2-J at 251-55).
- Dr. Azinge at LaVida Medical & Chiropractic Center, for services between July 27, 2004 and October 12, 2004: $850 (DX 2-J at 299).
- Montague Blundon, III, M.D., for services between September 22, 2004 and February 7, 2005: $1,913 (DX 2-J at 309).
- Michael A. Glasser, M.D., for services between October 1, 2004 and November 2, 2004: $410 (DX 2-J at 321).
- Montgomery Therapy, for services between October 22, 2004 and January 7, 2005: $3,825 (DX 2-J at 328-30).
- Prescriptions for various medications between July 22, 2004 and January 10, 2005: $1,368.61 (DX 2-J at 356).

40. Respondent executed an A&A with Dr. Montague Blundon, III, M.D., in which he promised to notify and pay his bills from the proceeds of any settlement. DX 2-J at 133-35.

41. In a letter dated May 12, 2005, Respondent made a settlement demand of $162,787.61 on The Hartford for bodily injury. DX 2-J at 86. The demand was comprised of the past medical bills detailed above, $50,000 in future medical treatment, and $100,000 for pain and suffering. *Id.* The other driver's policy limit, however, was only $25,000. DX 2-J at 229. On or about June 6, 2005, Respondent settled Mr. Thompson's personal injury case against the other driver for the limits of the policy—$25,000. DX 2-D at 29; DX 2-J at 39, 46.

42. On June 6, 2005, The Hartford issued a settlement check in the amount of $25,000 to "ECU Associates and their client Gilmore Thompson, Jr."

DX 7 (06/05) at 38. Respondent deposited the check into his DC IOLTA Account #-3145 on June 10, 2005. DX 7 (06/05) at 1, 38.

43. On June 29, 2005, Respondent wrote a check to Mr. Thompson for $2,000 on the firm's DC IOLTA Account #-3145. DX 2-H at 17; DX 7 (06/05) at 25. This check contains the notation "Payment against client's award." *Id.*

44. On July 19, 2005, Respondent wrote a check to Mr. Thompson for $8,625 on his DC IOLTA Account #-3145. DX 2-H at 18; DX 7 (06/05) at 32. This check contains a memo that reads, "Total Disbursement $10,625." *Id.* Respondent asked Mr. Thompson to come to his office to obtain his settlement check. DX 2-K at ¶ 7. When Mr. Thompson arrived, an employee of Respondent provided him the check for $8,625. *Id.* Respondent did not meet Mr. Thompson or provide him with any accounting of how he had arrived at this amount. *Id*., at ¶¶ 7-8.

45. On December 31, 2005, in response to the investigation of Disciplinary Counsel, Respondent produced an undated, unsigned disbursement sheet. DX 2-D at 26. This document lists fees of $10,590.60 and costs of $3,239.45. It also correctly lists $10,625 disbursed to Mr. Thompson, and incorrectly lists $10,302.03 paid directly to Mr. Thompson by the insurance company (it paid only $9,340.10), and a "balance in trust" of $544.95. *Id.* As shown on the disbursement sheet, these amounts total $35,302.03, the same amount purportedly recovered in settlement.

On February 9, 2006, as part of his response to the investigation of the Maryland Bar Counsel, Respondent produced a different undated, unsigned disbursement sheet that shows the same settlement amounts as the earlier disbursement sheet, $10,302.03 for property damage and $25,000 for personal injury, totaling $35,302.03. DX 2-F at 15. This one is identical to that produced to Disciplinary Counsel except that the amount of "balance in trust" is $242.92 resulting in an amount distributed of only $35,000 and not the $35,302.03 identified as being received. *Id.* Neither disbursement sheet explains the reason for holding any balance in trust. DX 2-F at 15; DX 2-D at 26.

46. The disbursement sheets produced by Respondent to Maryland and D.C.'s Disciplinary Counsel both misstate the amount recovered for property damage as being $10,302.03, when The Hartford paid only $9,340.01. DX 2-F at 15. Because Respondent used the overstated amount of $35,302.03 ($10,302.03 in property damage plus $25,000 in personal injury) to calculate his contingency fee, he overstated the amount of his fee.

47. On March 21, 2006, during the investigation by the Maryland Bar Counsel, Respondent sent a check to Mr. Thompson in the amount of $3,090.60, described as reimbursement of his 30% contingency fee for the property damage claim. DX 2-H at 19. This check was not written from either of Respondent's IOLTA accounts. *See* DX 6 (03/06) at 1; DX 7 (03/06) at 1.

48. On April 17, 2006, Respondent issued a check to Dr. Montague Blundon, III, MD for $1,221.08, written on his firm's business Account #3609.

DX 2-H at 20. In 2008, in response to Disciplinary Counsel's investigation, Respondent asserts that the "balance in trust" of $242.92 was disbursed to the firm in partial reimbursement for payment of Dr. Blundon in 2006. DX 2-H at 6.

49. The record does not support a finding that Respondent provided Mr. Thompson with an accurate accounting of his settlement proceeds. Both of the disbursement sheets Respondent produced as part of his files contain multiple factual errors. At the least, Respondent's records demonstrate that he should have maintained $544.95 in his DC IOLTA prior to his final disbursement to Mr. Thompson on March 21, 2006. However, Respondent's DC IOLTA Account #-3145 dropped below $544 on March 6, 2006. DX 7 (3/06) at 1.

Count 3 (Arthur Lee Wyatt, Jr.; BDN 2005-D317)

50. In July 2004, Arthur Lee Wyatt, Jr. lost his job and filed an EEOC case against his former employer. DX 3-C at 3. He sought unemployment benefits from the State of Virginia, but was denied on September 10, 2004. *Id.*

51. In a Notice of Appeal dated Friday, November 26, 2004, Mr. Wyatt appealed the denial of unemployment benefits. DX 3-C at 3-4. The Notice was signed by Respondent as "Attorney for the Applicant." *Id.* at 4. The Notice of Appeal states that Respondent's firm was retained by Mr. Wyatt "to file a law suit against [his former employer] for unlawful termination." *Id.* at 3. The Notice of Appeal was mailed to the Virginia Employment Commission in an envelope with a pre-printed return address of Respondent's firm. DX 3-C at 5.

52. The Virginia Employment Commission received Mr. Wyatt's Notice of Appeal on Wednesday, December 1, 2004. *Id.* On January 10, 2005, the Virginia Employment Commission sent Mr. Wyatt its decision granting his appeal and copying Respondent. DX 3-A at 14.

53. Respondent acknowledges meeting Mr. Wyatt in late November or early December 2004, DX C at 4 ¶ 1; DX B at 32 ¶ 1, but denied that he represented Mr. Wyatt for any purposes, including filing the Notice of Appeal. DX 3-B at 6-7.

54. Respondent did not give Mr. Wyatt a retainer agreement. DX 3-A at 3, 16.

III. CONCLUSIONS OF LAW

A. Disciplinary Charges Related to Representation of the Bonners

Disciplinary Counsel charged Respondent with violations of Rules 1.3(c), 1.4(a), 1.4(b), 1.5(a), 1.15(a), 1.15(b), 8.1, 8.4(b), 8.4(c), and 8.4(d) with respect to his representation of the Bonners. At the hearing and in post-hearing briefing, Disciplinary Counsel focuses primarily on the charge of misappropriation, so we will address Rule 1.15 first.

Rule 1.15: Misappropriation

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of a client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or

benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (internal citations omitted). Misappropriation occurs whenever the balance in the attorney's client trust account falls below the amount due to the client or third parties. *In re Brown*, 112 A.3d 913, 916 (D.C. 2015) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)); *In re Edwards,* 990 A.2d 501, 518 (D.C. 2010) (appended Board Report). Respondent violated Rule 1.15(a) with respect to his representation of both Angela Hammie-Bonner and Joe Bonner by not maintaining his clients' entrusted funds in his IOLTA account as demonstrated by having a balance below the amount of those funds. *See* FF 17, 31.[3]

Respondent argues that the Bonners' settlement funds were not misappropriated, but rather were used to fund Respondent's representation of Mr. Bonner in his employment dispute as agreed to by his clients. Respondent's retainer agreement to represent Mr. Bonner in his civil action is not dated, DX 1-O at 35-36, but based on Respondent's billing summary and other records we find that it was signed no earlier than September 1, 2004. DX 1-O at 32. The balance of Respondent's Maryland IOLTA Account #-4851 was below the amount of Mr. Bonner's entrusted funds on August 16, 2004, two weeks before any authorization to accept a retainer fee from Mr. Bonner. DX 5 (8/04) at 2. Thus, even if the Bonners agreed to use their settlement proceeds to pay for Mr. Bonner's other legal fees, such defense does not preclude a finding of misappropriation of

[3] Respondent has not and cannot argue that he was entitled to withdraw his contingency-based fee prior to notifying his client of his charges. If an attorney cannot withdraw any amount of fees that are disputed by a client, *In re Haar*, 698 A.2d 412, 417-18 (D.C. 1997), no fees can be withdrawn until the attorney provides the client an opportunity to dispute them.

Mr. Bonner's settlement proceeds. Moreover, there is no evidence in the record that Ms. Hammie-Bonner agreed that her settlement funds could be used to fund Mr. Bonner's legal fees other than the bald assertion by Respondent in his written submissions.

The Committee finds clear and convincing evidence that Respondent's misappropriation was reckless. Reckless misappropriation results from handling entrusted funds "in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior for the security of the funds." *In re Fair*, 780 A.2d 1106, 1110 (D.C. 2001) (quoting *In re Anderson*, 778 A.2d 330, 339 (D.C. 2001)). Our Court has summarized the many cases involving reckless misappropriation as follows:

> the central issue in determining whether a misappropriation is reckless is *how* the attorney handles entrusted funds, whether in a way that suggests the unauthorized use was inadvertent or the result of simple negligence, or in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior for the security of the funds.

Id. at 1114-115 (emphasis in original) (citations omitted).

Respondent argues that he relied on his experienced staff, whom he supervised, to maintain his accounts. *See, e.g.*, Respondent's Brief, filed September 11, 2017 (("R. Br.") at 9. He also argues that without the testimony of the complainants there is no clear and convincing evidence to support a finding of misappropriation. Respondent asserts that his clients "agreed to every step he took and every transaction made on their funds." Respondent's Supplemental Brief,

filed September 14, 2017 ("R. Supp. Br.") at 6. The record in this case paints a much different picture than what Respondent asserts.

Disciplinary Counsel subpoenaed Respondent's entire case files for the Bonners and produced those to the Hearing Committee. *See* FF 19. Disciplinary Counsel also subpoenaed all of Respondent's bank records for his IOLTA accounts during the relevant time period and produced those to the Hearing Committee. *See* FF 3. The Hearing Committee has reviewed all of these voluminous exhibits in detail. Collectively, these records show an abysmal lack of accurate recordkeeping within the office files, inconsistent and inaccurate accountings of personal injury recoveries, inconsistent, incomplete and often illegible case file notes, and a lack of written client communications. The bank records of Respondent's Maryland IOLTA Account #-4851 are replete with in-branch transfers to the firm's operating account and checks made payable to himself, his firm, "cash" and BB&T.

Respondent's counsel tacitly acknowledged these poor trust accounting practices by committing "to taking additional steps to improve ECU Associates' control over its financial records," and agreeing to enroll in a course on managing trust accounts. DX 1-L at 3. Taken together with the fact that Respondent's IOLTA account balance dropped below the amount of funds that he was entrusted to be holding for his clients on numerous occasions, the inescapable conclusion is that Respondent treated the IOLTA account as his own or "with a conscious indifference to the consequences of his behavior for the security of the funds." *Fair*, 780 A.2d at 1115.

Respondent seeks to shift the blame for his misappropriation on the poor recordkeeping of his firm's paralegals. In his initial response to Disciplinary Counsel's post-hearing brief, Respondent states that he "did not keep the files of the personal injury cases, a lot of the time, he relied on information and documents prepared by the paralegals." R. Br. at 9. The Rules do not permit such unquestioning delegation of the duty to safeguard entrusted funds. *See In re Gregory*, 790 A.2d 573, 578 (D.C. 2002) (holding money in trust for clients is a non-delegable fiduciary duty, and lawyers are required to supervise non-lawyers who assist in safeguarding entrusted funds); *see also* Rule 5.3 (lawyer responsible to assure that non-lawyer assistant's conduct is compatible with the professional obligations of the lawyer).

Rule 1.3(c): Failure to act with reasonable promptness;
Rule 1.4: Failure to inform client; and
Rule 1.15(b): Failure to promptly notify and pay client or third persons[4]

Rule 1.3(c) requires an attorney to act with reasonable promptness in representing a client. Rules 1.4(a) and (b) require an attorney to keep a client reasonably informed about the status of the case and explain a matter to the extent reasonably necessary for the client to make informed decisions regarding the representation. Both of these rules require a finding of what is reasonable within the context of the facts. Without the Bonners' testimony, we have a cold record that is lacking in correspondence to provide factual context adequate to make such findings. In the absence of such clear and convincing evidence we do not find

[4] Rule 1.15(b) in effect during 2004-2005 has been renumbered as Rule 1.15(c) since the events in question. We refer to the Rule as 1.15(b) throughout.

violations of Rules 1.3(c) and 1.4.

Disciplinary Counsel claims that Respondent violated Rule 1.15(b) by failing to act with reasonable promptness in paying the Bonners and their medical providers, by failing to communicate to the Bonners how he was distributing entrusted funds, and how he calculated his fees and costs. Rule 1.15(b) provides no bright-line test for what constitutes "prompt" payment. *In re Ross*, 658 A.2d 209, 211 (D.C. 1995). Instead, a case-specific inquiry is required. *In re Martin*, 67 A.3d 1032, 1046 (D.C. 2013). *See*, *e.g.*, *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) ("no doubt" that six-month delay in paying medical providers is not "prompt"); *Ross*, 658 A.2d at 211 (eleven--month delay was not prompt).

The record here is devoid of any evidence beyond the cold dates of when the settlements were reached and when Respondent's clients were paid. As such, it does not provide clear and convincing evidence of a lack of prompt payment because we do not know what occurred in the four months it took to disburse Ms. Hammie-Bonner's settlement and the seven months it took to disburse Mr. Bonner's settlement. Respondent alludes to an initial miscommunication with Ms. Hammie-Bonner. The record confirms that he made the payment on the same day she signed the disbursement. FF 13, 15. As for Mr. Bonner, he entered into a separate retainer agreement with Respondent shortly after he obtained a settlement and eventually signed a disbursement sheet that agreed to a certain amount being withheld to pay for this separate representation. FF 29, 32. Without testimony from the Bonners or other evidence, we are reluctant to find that clear and

convincing evidence of a violation of Rule 1.15(b).

Rule 1.5(a): Unreasonable Fees

We agree with Disciplinary Counsel that by charging a per-minute fee for telephone calls, Respondent imposed an unreasonable fee on his clients. According to the disbursement sheets for both Ms. Hammie-Bonner and Mr. Bonner, Respondent charged his clients $.15/minute for calls made to the client or others. The retainer agreement noted that the client would be responsible for "all costs and expenses" and "that it may be necessary for the firm to incur costs on [y]our behalf, which could include, but may not be limited to, investigative charges, court and discovery costs, expert witness fees and charges for securing records." DX 2-A at 6. Respondent makes the incredible assertion, without any supporting evidence, that these telephone charges are costs his firm incurred. We are not aware of any telephone service available in the District of Columbia outside of the Central Detention Center that "incurs costs" for making or receiving local calls on a per minute basis. If Respondent had found such an expensive telephone service and had failed to change his service to a more economical market rate service, it would have been unreasonable for Respondent to transfer these costs to his clients. Telephone charges to Ms. Hammie-Bonner of $190.50 and to Mr. Bonner of $168 constitute unreasonable fees in violation of Rule 1.5(a). We also find the charge of a "PIP fee" to be unreasonable where no such charge is identified in the retainer agreements.[5]

[5] In reaching these conclusions, we do not intend to calculate Respondent's proper fee or costs.

Rules 8.1 and 8.4: Dishonesty

Disciplinary Counsel charges Respondent with various types of dishonest acts or omissions. "Clients must be able to rely unquestioningly on the truthfulness of their counsel." *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007); *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (*en banc*). The term "dishonesty" is more than fraudulent, deceitful or misrepresentative conduct, but includes "conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness." *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (citing *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)).

Rule 8.4(c), the general rule against dishonesty, prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." Disciplinary Counsel offers several examples of conduct that could be viewed as dishonest, but in the absence of testimony from the Bonners or unambiguous documentary evidence in support, we cannot find clear and convincing evidence that Respondent was dishonest in his representation of the Bonners.

Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Theft is such a criminal act. *See In re Pelkey*, 962 A.2d 268, 278 (D.C. 2008). In the District of Columbia, "[a] person commits the offense of theft if that person wrongfully obtains or uses the property

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That is not the responsibility of this Hearing Committee. *See In re Clower*, 831 A.2d 1031, 1032 n.1 (D.C. 2003) (unresolved factual dispute as to how much was owed medical provider immaterial to determine disciplinary violation).

of another with intent . . . to appropriate the property to his or her own use . . . ." D.C. Code § 22-3211. Because we have found that Respondent's misappropriation was merely reckless, we are not inclined to find that it constitutes theft.

Rule 8.1(a) prohibits a lawyer from making knowingly false statements of fact or failing to respond reasonably to a lawful demand for information in connection with a disciplinary matter. Respondent did not fail to respond to a lawful demand for information. In fact, he produced his entire case files and provided detailed responses to multiple inquiries. Instead, Disciplinary Counsel asserts that Respondent violated Rule 8.1(a) by providing false information in response to an inquiry about the disposition of Mr. Bonner's PIP payments.

To find a violation of Rule 8.1(a), we must find clear and convincing evidence that Respondent knew he provided false information to Disciplinary Counsel. *See*, *e.g.*, *In re Luxenberg*, Board Docket No. 14-BD-083, at 23 (BPR July 6, 2017) (it is an express requirement that in order to violate 8.1(a), one must make "knowingly" false statements), *recommendation adopted*, *In re Luxenberg*, No. 16-BG-762 (D.C. Dec. 7, 2017). Without Respondent's testimony, the only evidence of Respondent's false statements are the eight single-spaced pages he wrote in response to Disciplinary Counsel's ten questions (counting subparts, there are 39 questions). While Respondent stated erroneously three times that he had not deposited Mr. Bonner's PIP checks in his IOLTA account, DX 1-O at 4, 5, the context of these statements does not support a finding that these false statements were knowingly false. Respondent provided responses to numerous questions of

Disciplinary Counsel, most of which appear to be inaccurate. Respondent had no obvious reason to knowingly make these false statements; there is nothing so significant about the disposition of Mr. Bonner's PIP payments that their concealment would aid in Respondent's defense. Moreover, this information is easily discoverable by reviewing Respondent's bank records. While this is a close call, we do not find clear and convincing evidence that Respondent made a knowingly false statement to Disciplinary Counsel on this cold record.[6]

Rule 8.4(d) states that it is "professional misconduct to engage in conduct that seriously interferes with the administration of justice." To establish a violation of Rule 8.4(d), Disciplinary Counsel must prove that (1) the attorney either took improper action or failed to take action when he should have acted; (2) the conduct involved bears directly on a case in the judicial process with respect to an identifiable case or tribunal; and (3) the conduct taints the judicial process in more than a *de minimis* way, meaning that it must "at least potentially impact upon the process to a serious and adverse degree." *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996) (citation omitted). Because we do not find Respondent's inaccurate statements to be so egregious as to taint Disciplinary Counsel's investigation in more than a *de minimis* way, we do not find that he violated Rule 8.4(d) based on the record before us. *See In re Hallmark*, 831 A.2d 366, 375 (D.C. 2003)

[6] Disciplinary Counsel also argues that Respondent violated rule 8.1(a) by falsely claiming to have provided the Bonners with disbursement sheets. Without live testimony, we have only unsworn statements from Respondent and his clients and unsigned disbursement sheets in the client files. We do not find this to be clear and convincing evidence that Respondent lied about providing the Bonners with disbursement sheets.

(negligently deficient request for compensation, which placed unnecessary burden on judge, did not seriously and adversely affect the administration of justice).

B. Disciplinary Charges Related to Representation of Gilmore C. Thompson, Sr.

Disciplinary Counsel charged Respondent with violations of Rules 1.4(a), 1.4(b), 1.5(a), 1.15(a), 1.15(b), 8.1, 8.4(b), 8.4(c), and 8.4(d).

Rules 1.15(a) and 1.15(b): Misappropriation and Handling of Third-Party Funds

Disciplinary Counsel first argues that Respondent violated Rule 1.15(a) by paying Mr. Thompson only half of his property damage settlement check of $1,400.01. The record supports Respondent's claim, by clear and convincing evidence, that he advanced his client $700 before receipt of the settlement check and withdrew his advance from the proceeds as requested. *See* FF 36.

The only funds that could be a basis for a finding of misappropriation relates to the balance of the personal injury settlement check of $25,000, credited to Respondent's DC IOLTA Account #-3145 on June 10, 2005. Prior to the disbursements to Mr. Thompson of $2,000 on June 29, 2005, and $8,625 on July 19, 2005, the record evidence shows that Respondent's DC IOLTA Account #-3145 had in excess of $25,000. DX 7 (06/05) at 2; DX 7 (07/05) at 2. However, based on the disbursement sheet, Respondent should have retained at least $544.95 as a "Balance in trust" for Respondent until he sent Mr. Thompson $3,090.60 on March 21, 2006. Respondent's IOLTA Account #-3145 dropped to $412.59 between March 6 to 23, 2006. DX 7 (03/06) at 1.

In addition, Respondent had an obligation to safeguard $1,221.08 in his IOLTA account to pay Dr. Mundon prior to April 17, 2006, when he was paid. The A&A signed by Respondent is a "contractual agreement made by the client and joined in or ratified by the lawyer to pay certain funds in the possession of the lawyer . . . to a third party . . .." *In re Bailey*, 883 A.2d 106, 117 (D.C. 2005) (quoting D.C. Legal Ethics Opinion No. 293, at 165). Respondent's assertion that he believed all medical bills were paid by Mr. Thompson is insufficient to remove this obligation in light of the A&A he signed. *Gregory*, 790 A.2d at 578. Respondent's IOLTA Account #-3145 dropped below $1,221 on numerous occasions prior to April 2006. As such, we find that Respondent misappropriated a portion of Mr. Thompson's personal injury settlement proceeds. *Brown*, 112 A. 3d at 916. For the reasons stated above with respect to the Bonners' entrusted funds, and because Respondent produced two inconsistent disbursement sheets for Mr. Thompson – both of which contained errors that injured his client – we find this misappropriation to be reckless.

Disciplinary Counsel claims that Respondent violated Rule 1.15(b) by failing to promptly pay Mr. Thompson and Dr. Mundon after receipt of the settlement. Rule 1.15(b) provides no bright-line test for what constitutes "prompt" payment. *Ross*, 658 A.2d at 211. Instead, a case-specific inquiry is required. *Martin*, 67 A.3d at 1046. *See*, *e.g.*, *Ross*, 658 A.2d at 211 (11-month delay was not prompt). When the reason for the lawyer continuing to hold the funds is rendered

moot—such as when there has been a settlement—the lawyer must pay "immediately." *Edwards*, 990 A.2d at 520-21.

We have limited evidence regarding what took place between Respondent's receipt of the settlement check and payment of Respondent, so we are not willing to find that a delay of approximately five weeks is necessarily a violation of Rule 1.15(b). In contrast, the ten-month delay in paying Dr. Mundon is clearly a violation. The A&A at issue in this matter assigned an interest in settlement proceeds to Dr. Mundon and created a lien in favor of the doctor against such settlement funds. *See Bailey*, 883 A.2d at 118 (holding that even poorly drafted contract that did not use the term "assignment" and did not purport to assign or create a lien, established in physician a "just claim" with respect to settlement funds for purposes of Rule 1.15). Respondent claims that he believed that his client had paid Dr. Mundon. By signing the A&A, Respondent had an affirmative duty to make sure that Dr. Mundon was paid. He could not simply rely on the statement of his client, or a mere assumption on his own part, but needed to confirm this with Dr. Mundon. Even accepting Respondent's claim that he thought Dr. Mundon had been paid, his failure to see that he was paid for ten months violated Rule 1.15(b).

Rule 1.4: Failure to inform client

Rule 1.4(a) requires an attorney to keep the client reasonably informed about the status of his matter. Rule 1.4(b) requires an attorney to explain a matter to the extent reasonably necessary to permit the client to make informed decisions

regarding the representation. The numerous written correspondence in Respondent's file and the firm's notes of numerous telephone calls between Respondent and Mr. Thompson does not support Disciplinary Counsel's charges. In the absence of Mr. Thompson's testimony to the contrary and, considering that his affidavit does not directly refute the record evidence, we cannot find a violation of Rules 1.4(a) or 1.4(b).

Rule 1.5(a): Unreasonable Fees

For the same reasons as stated above, we find that by charging Mr. Thompson $826.20 in telephone call "costs," Respondent charged an unreasonable fee in violation of Rule 1.5(a). We also find an unreasonable fee in Respondent's calculation of his contingency fee from an overstatement of Mr. Thompson's property damage recovery.

We do not find, however, a violation of Rule 1.5(a) based upon the fact that Respondent took his contingency fee from both the personal injury and property damage recoveries. The retainer agreement is not clear on this point. Respondent was to represent Mr. Thompson in his "claim for damages." Mr. Thompson appears to have taken the position that Respondent was to handle all of his property damage needs, including negotiating with the service station, the body shop and rental car companies. Respondent did considerable work for Mr. Thompson related to his property damage claim. Although Respondent disagreed with Mr. Thompson's interpretation of the scope of the retainer agreement, he relented, but informed his client that he would be taking 30% from the property

damage recovery as well. Although Respondent later agreed to repay his contingency fee based on the property damage claim, as suggested by Maryland Bar Counsel, we do not find clear and convincing evidence on this record that this fee was unreasonable.

Rules 8.4(b) and 8.4(c): Dishonesty

Similar to his conduct with respect to the Bonners, we do not find that Respondent engaged in dishonesty with respect to Mr. Thompson or theft of Mr. Thompson's property. Respondent appears to have overvalued the personal injury claim from which he calculated part of his fee, unreasonably charged for telephone calls and held back over $500 as a "balance in trust," but we do not see that any of these rise to the level of theft as a violation of Rule 8.4(b).

Rules 8.1 and 8.4(d): Providing False Information to Disciplinary Counsel

In the Specification of Charges, Disciplinary Counsel identifies four false statements made by Respondent in response to its May 16, 2008 letter: (1) the total amount of entrusted funds received on behalf of Mr. Thompson; (2) the number of payments Respondent received on Mr. Thompson's behalf; (3) the bank accounts where entrusted funds were deposited; and (4) the destination and date of each disbursement of entrusted funds. While these statements are factually wrong, we cannot find that they were knowingly wrong in light of Respondent's lax accounting system that helped demonstrate the recklessness of his misappropriation. For the same reasons as described with respect to the Bonners,

we do not find that these false statements of Respondent seriously interfered with the administration of justice in violation of Rule 8.4(d).

C. Disciplinary Charges Related to Representation of Arthur Wyatt, Jr.

Disciplinary Counsel charged Respondent with violating Rules 1.4(b) and 1.5(b) with respect to his representation of Arthur Wyatt, Jr. Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rule 1.5(b) requires a lawyer to communicate to the client, in writing, the basis or rate of fee before or within a reasonable time after commencing the representation. Read together, these rules require that an attorney explain and memorialize the nature of the representation, and his fee, typically in a retainer agreement. *See In re Samad*, 51 A.3d 486, 497 (D.C. 2012) ("To the extent a lawyer limits the scope of representation, it is essential that clients clearly understand the division of responsibilities under a limited representation agreement.").

Respondent's sole defense to these alleged violations is that he did not represent Mr. Wyatt. Respondent conceded that he met with Arthur Wyatt about an employment case and agreed to review the relevant papers. FF 53. Respondent further conceded that a Notice of Appeal was transmitted to the Virginia Employment Commission from his office. FF 51. In response to the complaint, however, Respondent stated that he "declined representation in this case right from the beginning." DX 3-B at 1.

> I have never done anything, except my usual courtesies and politeness, to give Mr. Wyatt the impression that I was going to

> change my mind and become his lawyer on his wrongful discharge or discrimination case, or any other matter. I have never communicated with any third party indicating that I was an attorney for Mr. Wyatt.

DX 3-B at 7.

The record evidence is firmly to the contrary. The Notice of Appeal stated that Respondent was "representing Mr. Wyatt in a civil suit against his former employer," and that the appeal was being filed by "counsel," after Mr. Wyatt had "retained this law firm to file a law suit against" Mr. Wyatt's former employer. The signature block on the notice was "Ephraim Ugwuonye, Esquire, Attorney for the Applicant," and bore what appeared to be Respondent's signature. FF 51. In response to Disciplinary Counsel's brief highlighting this evidence, Respondent claims that Disciplinary Counsel "misconstrued the context" of his prior statement.

> The Respondent never denied preparing that appeal for Wyatt. In fact, he admitted it. So, the proper context of "third party" in his correspondence was in reference to communications with anybody apart from that document he sent in on behalf of Wyatt, Respondent's singular act.

R. Br. at 22.

Mr. Wyatt and Respondent did not have a pre-existing attorney-client relationship. *See generally* DX 3-A to 3-C. The existence of an attorney-client relationship is not solely dependent on a written agreement, payment of fees, or the rendering of legal advice. *In re Lieber*, 442 A.2d 153, 156 (D.C. 1982). An attorney's "ethical responsibilities exist independently of contractual rights and duties"; consequently, the obligations imposed by the Rules arise "from the

establishment of a fiduciary relationship between attorney and client." *In re Fay*, 111 A.3d 1025, 1030 (D.C. 2015) (quoting *In re Ryan*, 670 A.2d 375, 379, 380 (D.C. 1996)). In determining whether an attorney-client relationship exists, we look to the totality of the circumstances. *Lieber*, 442 A.2d at 156. Critical in the determination here is the fact that Respondent told a quasi-judicial public body that he represented Mr. Wyatt. *See Fay*, 111 A.3d at 1030.

By representing Mr. Wyatt without a written statement setting forth the basis for his fee, if any, Respondent has violated Rule 1.5(b). By failing to explain the limited scope of his representation to Mr. Wyatt, Respondent violated Rule 1.4(b).

D. Respondent's General Defenses

Respondent complains that he was denied due process because Disciplinary Counsel waited five years after the complaints were lodged before filing the Specification of Charges. Respondent argues that the delay was "unreasonable, unnecessary, an abuse of discretion and has been extremely detrimental to the Respondent in many ways." R. Br. at 7. Disciplinary investigations are complex and require time to develop properly. The record in this case shows that Disciplinary Counsel notified Respondent of the complaints on April 5, 2005 (Ms. Hammie-Bonner); November 9, 2005 (Mr. Thompson); and September 28, 2005 (Mr. Wyatt). DX 1-F; DX 2-A; DX 3-A. Disciplinary Counsel sent correspondence to Respondent prior to the conclusion of these investigations in May 1, 2008 (Ms. Hammie-Bonner); January 24, 2008 (Mr. Thompson); and August 20, 2007 (Mr. Wyatt). DX 1-N; DX 2-E; DX 3-C. On October 30, 2008,

Respondent was reciprocally suspended by the D.C. Court of Appeals based on a disciplinary suspension in Maryland. DX C. Two years later, Disciplinary Counsel filed the Specification of Charges in this case.

Delay in disciplinary investigations does not benefit the Respondent, the public, or our disciplinary system. But investigations that are conducted in a cursory fashion without sufficient time to consider all aspects of the charges are much worse for everyone. Respondent cites no prejudice he suffered due to Disciplinary Counsel's delay other than "keeping his life in suspense." R. Br. at 8. Moreover, the vast majority of the delay in this proceeding was at the request of Respondent who filed several motions for deferral and various requests for additional time to submit his filings. The Hearing Committee does not find that this delay was unreasonable or detrimental to Respondent sufficient to warrant a dismissal of the charges or a reduction in the sanction.

Respondent makes the point that if he had consented to disbarment in 2006, he would have been eligible for reinstatement in 2011. As it is, he has been suspended from the practice of law in the District of Columbia since 2008 and, if the Committee's recommendation is adopted by the Court of Appeals, his disbarment will not begin to run until 2018 at the earliest. Again, this delay is entirely of Respondent's own making. He could have completed his term of reciprocal suspension by filing a certification under D.C. Bar R. XI, § 14(g). By failing to do this and repeatedly seeking deferrals and delays, Respondent cannot now complain of his lengthy suspension.

E. Conclusion

In summary, we find that Respondent:

- engaged in reckless misappropriation in violation of Rule 1.15(a) with respect to his representation of Ms. Hammie-Bonner, Mr. Bonner and Mr. Thompson;
- failed to promptly pay a medical care provider with whom he had entered into an A&A in violation of Rule 1.15(b) with respect to his representation of Mr. Thompson;
- failed to explain the limited scope of his representation in violation of Rule 1.4(b) with respect to his representation of Mr. Wyatt;
- failed to provide a written statement setting forth the basis for his fee in violation of Rule 1.5(b) with respect to his representation of Mr. Wyatt; and
- charged an unreasonable fee in violation of Rule 1.5(a), with respect to his representation of Ms. Hammie-Bonner, Mr. Bonner and Mr. Thompson.

IV. RECOMMENDATION AS TO SANCTION

In this case, Bar Counsel has asked the Hearing Committee to recommend the sanction of disbarment for what Bar Counsel contends were Respondent's "multiple, intentional acts of misappropriation." BC Br. at 37. Respondent disputes that he has engaged in any misconduct, so does not address any sanction. We find violations of some, but not all of the Rules charged against Respondent.

Some of those violations, like those related to Mr. Wyatt, would likely be sanctioned, at most, by a short suspension. Because the presumptive sanction for reckless misappropriation is clear, we recommend the sanction of disbarment.

When attempting to determine "what discipline is appropriate under the circumstances, [the Hearing Committee must] review the respondent's violations in light of 'the nature of the violation, the mitigating and aggravating circumstances, [and] the need to protect the public, the courts, and the legal profession.'" *In re Austin*, 858 A.2d 969, 975 (D.C. 2004) (quoting *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc)). "[I]n virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence." *In re Pleshaw*, 2 A.3d 169, 173 (D.C. 2010) (quoting *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc)). As the Court reiterated in *Pleshaw*, under its precedent "'conscious indifference' suffices; disbarment 'is not reserved for the most egregious and dishonest' misappropriations." *Id*. (citing *In re Bach*, 966 A.2d 350, 352 (D.C. 2009)).

Lawyers who have engaged in reckless or intentional misappropriation can avoid being disbarred only if they can demonstrate "extraordinary circumstances" or that the "mitigating factors of the usual sort" are "especially strong" and "substantially outweigh any aggravating factors as well." *Addams*, 579 A.2d at 191. In the absence of misappropriation caused by a "disabling addiction" or depression, not present here, only once has the Court deviated from the

presumptive sanction for disbarment for non-negligent misappropriation. *See In re Hewett*, 11 A.3d 279 (D.C. 2011). In that single instance, the Court found that, in addition to mitigating factors of the "usual sort," the lawyer's single act of intentional misappropriation was "motivated *solely* by a desire to protect his ward's interest[.]" *Id.* at 289 (emphasis added). No such claim has been or could be advanced by Respondent with respect to his three clients from whom he misappropriated settlement proceeds. Consequently, we find no extraordinary circumstances that preclude the presumptive sanction. Thus, the sanction of disbarment is required.

V. CONCLUSION

For these reasons, we recommend that the Court enter an order disbarring Respondent.

AD HOC HEARING COMMITTEE

By: _____
Michael J. Zoeller
Chair

_____
Dr. Robin J. Bell
Public Member

_____
Edward Levin
Attorney Member