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

In the Matter of:	:	
	:	
BERNARD A. GRAY, SR., ESQUIRE,	:	
	:	
Respondent.	:	Board Docket No. 16-BD-045
	:	Bar Docket No. 2015-D349
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 955013)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, Bernard A. Gray, Sr., is charged in both counts of the Specification of Charges filed by Disciplinary Counsel with violating Rules 1.15(a) and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"). The violations charged arise from Respondent's holding of entrusted funds on behalf of a client, Stephanie Artis, in his trust account. Disciplinary Counsel alleges that Respondent withdrew $9,000 from the account for his own personal use, resulting in an overdrawn account and a dishonored check made out to his client's creditor. The Amended Specification of Charges, filed on December 14, 2016,[1] alleges an additional misappropriation in the context of a separate

[1] On December 14, 2016, Disciplinary Counsel filed an amended Specification of Charges with the consent of Respondent. Because the filing date was so close to the hearing date in this matter, a pre-hearing was held by telephone. During the pre-hearing, Respondent's counsel, John Nields, Esquire, disclosed that following the filing of the original Specification of Charges, Respondent engaged him with regard to the Disciplinary Counsel's charges in this matter. DX P.

representation of Alice Walker. In the Walker matter, Respondent was entrusted by Ms. Walker to hold in his trust account a leftover portion of a settlement in the event Ms. Walker's prior counsel made a claim for attorney's fees. While no claim was ultimately made, Disciplinary Counsel alleges that the balance in Respondent's trust account frequently fell below the amount entrusted to him. Disciplinary Counsel alleges that in regard to the Artis and Walker matters Respondent violated Rule 1.15(a) (intentional, reckless, or negligent misappropriation, commingling, and failure to maintain complete records) and charges a separate violation for each matter, as well as a violation of Rule 8.4(d), by seriously interfering with the administration of justice in Disciplinary Counsel's investigation of the Artis matter.

I. PROCEDURAL HISTORY

On July 7, 2016, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that Respondent violated the following rules arising from an overdraft in Respondent's

---

Mr. Nields initiated a review of Respondent's trust accounts and that review uncovered the matters alleged in the charges regarding Ms. Walker. Respondent brought those matters to the attention of Disciplinary Counsel in July 2016. After discussion between the parties, Mr. Nields and Disciplinary Counsel agreed that Disciplinary Counsel would file an amended Specification of Charges adding a count with regard to the Walker matter. Due to the press of business in other matters and relying on the agreement between the parties and the early notice those discussions provided, Disciplinary Counsel did not file the amended charges until December 14, 2016, but her pleading did not advise of the agreement between the parties. The Committee required that the Amended Specification be reviewed by the Contact Member who reviewed the original Specification of Charges. The Amended Specification was reviewed and approved on January 4, 2017.

IOLTA account and his alleged failure to produce IOLTA records to Disciplinary Counsel:

- Rule 1.15(a), by engaging in intentional, reckless, or negligent misappropriation, commingling, and failing to maintain complete records for five years after terminating a representation; and
- Rule 8.4(d), by seriously interfering with the administration of justice.

Petition ¶ 12.

Respondent filed an Answer on July 26, 2016. Disciplinary Counsel filed an Amended Specification of Charges on December 14, 2016. A hearing was held on January 12 and 13, 2017, before this Ad Hoc Hearing Committee (the "Hearing Committee"). Disciplinary Counsel was represented at the hearing by Traci M. Tait, Esquire. Respondent was represented at the hearing by John W. Nields, Jr., Esquire.

Prior to the hearing, Disciplinary Counsel submitted DX[2] A through R. All of Disciplinary Counsel's exhibits were received into evidence without objection. Tr. 48, 131. DX T, a summary sheet of financial records, was offered during the hearing and was also admitted. Tr. 284. Exhibit S, consisting of Respondent's two prior informal admonitions, was discussed at the hearing, but submitted on January 13, 2017, and is hereby admitted. *See* Tr. 494. During the hearing, Disciplinary Counsel called as witnesses Respondent and Kevin O'Connell, its Senior Forensic Investigator.

[2] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on January 12 and 13, 2017.

Also prior to the hearing, Respondent submitted RX 1 through 32. All of Respondent's exhibits were received into evidence without objection. Tr. 131. Respondent testified on his own behalf and called as a witness Stephanie Artis, a former client. RX 31A, submitted at the hearing on January 12, 2017, is hereby admitted into evidence. *See* Tr. 131, 394.

On December 14, 2016 Disciplinary Counsel filed an Amended Specification of Charges adding a second count charging Respondent with violating Rule 1.15(a) with regard to his handling of funds in the Walker matter. *See* fn. 1, *supra*. Following the telephonic pre-hearing held on December 30, 2016, on January 4, 2017, the Contact Member approved the Amended Specification of Charges and on January 6, 2017, Respondent filed his Answer to the Amended Specification of Charges.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. Tr. 486; *see* Board Rule 11.11. Following the hearing, on January 17, 2017, Respondent submitted RX 33 and 34, which are hereby admitted into evidence.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on March 6, 2017, and Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on April 10, 2017. Respondent filed an amended post-hearing brief on April 20, 2017 in response to an order of the Chair. Disciplinary Counsel's Reply

was filed on April 27, 2017. Disciplinary Counsel contends that Respondent committed both of the charged violations and should be disbarred as a sanction for his misconduct. Respondent admits that he engaged in misappropriation and commingling and that he failed to keep adequate records of client funds in violation of Rule 1.15(a), but contends that he committed misappropriation negligently, rather than recklessly or intentionally, and denies that he violated Rule 8.4(d), but does not recommend a particular sanction. On April 27, 2017, Disciplinary Counsel filed a consent motion to supplement the record with DX U, a copy of a check, and on May 3, 2017, Respondent filed a consent motion to supplement the record with RX 35, an additional bank statement. The Hearing Committee granted both motions on May 5, 2017.

As set forth below, the Hearing Committee finds clear and convincing evidence that Respondent violated Rule 1.15(a) by engaging in commingling and misappropriation and by failing to keep adequate records of client funds, and that the charged misappropriations were negligent. The Committee recommends that Respondent be suspended for six months for his violation of Rule 1.15(a). The Committee further recommends that his reinstatement be conditioned upon the successful completion of a Disciplinary Counsel-approved ethics-related Continuing Legal Education ("CLE") course relating to the care and custody of entrusted funds and the management of a law office.

On the basis of the record as a whole, the Hearing Committee makes the Findings of Fact and Conclusions of Law set forth below, each of which we find is supported by clear and convincing evidence.

II. FINDINGS OF FACT

A. Background

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on May 26, 1978, and assigned Bar number 955013. DX A.

2. Working from his home in Anacostia, Respondent has practiced law as a sole practitioner for nearly forty years, since 1978. Tr. 25, 326-27. His practice principally involved landlord-tenant matters as counsel for both tenants and small landlords, but also included some family law and probate matters. Tr. 327-28. He has never had any partners or associates nor has he ever had a secretary for longer than two weeks, a bookkeeper, or any other type of clerical help. Tr. 327. Over the course of his practice, he has represented anywhere from 1,100 to 1,500 clients. Tr. 26, 333, 403.

3. Respondent has used a standard retainer agreement throughout his years as a lawyer. *E.g.*, RX 9. He has followed a practice of providing the retainer agreement to each new prospective client before being retained, and giving the client an opportunity to take the retainer agreement home to study it before signing. Tr. 163-65. The standard agreement provides for an initial retainer (usually of between $100 to $1,500), that the client may pay in installments if he or she wishes. Tr. 330. It provides that Respondent's fees will be based on hours

worked. Depending on the nature of the case, his hourly rates have ranged from $75-$125, and sometimes—but rarely—higher. Tr. 329. However, to the extent that Respondent's fees were based on hours worked, the record discloses no meaningful, accurate, or useful method to track his hours from 2007 forward.

4. Respondent's billing and collection practices have been lenient. He has had a "long-standing practice of . . . providing services that at least to some extent exceeded the moneys that [the clients] paid [him]." Tr. 445 (questioning by Chairman O'Malley). Indeed, he was left with unpaid balances at the end of the day in 50%-75% of his cases. Tr. 331-32 (questioning by Committee Member Kavet); *see also* Tr. 163-65 (questioning by Chairman O'Malley).

5. Respondent always had a trust account for his law practice. Tr. 337. The trust account was initially at Riggs or its successor, PNC. *Id.* In or about 2013 the trust account was transferred to SunTrust, and on June 30, 2014 the account was transferred back to PNC. Tr. 120, 144, 147, 337. There was $14,440.76 in Respondent's SunTrust IOLTA account when it was closed on June 30. RX 28. Those funds were transferred into a new PNC IOLTA account. Tr. 147; RX 35.

6. Respondent followed a practice of depositing his retainer fees into his trust account. Tr. 243. Respondent always understood that when he received unearned fees from clients, they were entrusted funds. Tr. 27-28. Respondent further understood that those entrusted funds had to be deposited in an entrusted funds account until earned. Tr. 28-29. He has always known throughout his

practice that entrusted funds—including unearned funds—were placed in a separate trust account "[f]or safekeeping of the client, the protection of them." Tr. 29; *see also* DX O at 7 ("The purpose of my trust account is to keep funds belonging to my clients separate from my personal funds so that I will always be able to return a client's funds on request, or pay the client's funds to third parties when requested.").

7. Given the nature of Respondent's practice and the resultant need for consumer-friendly financial arrangements,[3] Respondent's retainers have been in the great majority of cases—98% by Respondent's estimate—earned soon after they were received. DX O at 3, 13; Tr. 96, 162, 185, 339-340, 342-44. In some cases the payment had been earned before Respondent received it from the client. *Id*. Respondent routinely deposited funds that he had earned in their entirety into his entrusted funds account: "I have routinely placed client retainer checks in my trust account for the purpose of paying *my fee* when earned. . . . The checks are usually comparatively small in amount; and are almost always either already earned before I deposit them, or earned very shortly after deposit." DX O at 7 (emphasis in original); *see also* Tr. 96 ("[E]very – 98% of any money I put in my account, I've either earned before I put it in, or I earn it shortly thereafter."). Contrary to the clear meaning of Rule 1.15(a) and decisions of our Court of Appeals, Respondent did not believe that he was *required* to withdraw retainer fees

[3] There were a number of factors which contributed to this result: first, the small size of the retainers; second, the fact that the client may pay them over time; and third, the clients' frequent need for immediate services. *See* Tr. 342-44.

from his trust account when earned; and he did not always do so. Tr. 114, 413. He believed instead that he was *permitted* to withdraw these fees when earned. Tr. 339, 413.[4]

8. These retainer fees have constituted the overwhelming majority of the client funds that Respondent has placed in his client trust account over the years. Tr. 185. On rare occasions, Respondent has received pure client funds not expected or intended eventually to be paid to him when earned. These have included, for example, proceeds from the sale of property and proceeds of a judgment obtained for the client. At the hearing, Respondent could recall only four such examples. Tr. 344.

9. Even after Respondent had earned his portion of a given client's settlement proceeds, he did not withdraw them from his IOLTA if he "didn't need the money." Tr. 114; *see* Tr. 140. On occasions when he did need the money, Respondent would pay himself from retainers received from clients, "especially in later years," when he "needed the money or . . . [had] billed the client." Tr. 338; *see also* Tr. 112-14, 167-69, 339; DX H at 1 ("But I will be able to collect the retainer fee as I did in November 2015 because I needed the money for my personal use.").

[4] To the degree that Disciplinary Counsel's Proposed Finding of Fact ("PFF") ¶ 7 suggests that Respondent's belief is that he *must* withdraw retainer fees from his trust account when earned, that suggestion is incorrect. *See* Tr. 114, 413. Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction will be referred to by paragraph number as "ODC PFF," or by page number ("ODC Br."). Respondent's Amended Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction will be also be referred to by paragraph number as "R. PFF," or by page number ("R. Br.").

10. Respondent was aware of his obligation to keep up-to-date records of the funds of each client held in his trust account, DX O at 2-3, and until approximately 2007, he complied with this obligation. Respondent was also aware over his nearly four-decade career that he was obligated to keep equally accurate records about how much money he needed to *remove* from his IOLTA after he had earned his fees, Tr. 30, 345-46, though he did not understand that he was required to remove retainer fees from the trust account as soon as they were earned. Tr. 114, 413. Respondent owned and used a computer program for lawyers that allowed him to reflect client payments, write checks, and maintain "records of what has happened in terms of the items that you charge and how much you charged for each item." Tr. 35. He used computers to track his law firm's finances from the time he started his practice in 1978 and was still using accounting software in 2016. Tr. 35-41. He entered each transaction involving client funds in and out of his trust account on his computer; and he maintained up-to-date ledgers for each client on the computer. Tr. 347. Nevertheless, in 2007 Respondent stopped tracking the movement of entrusted funds into and out of his IOLTA. Tr. 59, 242, 346-47. For at least eight years, Respondent did not reconcile the bank statements from his IOLTA with the checks he wrote against the accounts, and he seldom even looked at the bank statements at all. Tr. 59, 242; *see* Tr. 52-58; 346-47. *See generally* DX H, L, O, P.

11. Respondent believed that he had, even in the absence of up-to-date records, "a reasonably accurate understanding" of the amount of unearned fees and

other client funds in his trust account at any given time. DX O at 3; Tr. 184-85. In general this was apparently true, but within twenty-four months of writing the last check in Ms. Walker's case, he "forgot" about his promise to safeguard her $10,000 and spent nearly $11,000 belonging to her and Mr. Thomas. *See* Tr. 150-52.

12. Respondent also held in his IOLTA funds that he had only partially earned and claimed to know the specific dates by which he earned clients' fees. DX O at 13. The exhibits submitted by the parties revealed that Respondent's records were, at best, confused, and provided a limited basis for claiming any specific amount earned.[5] *See generally* DX A-R; RX 1-34. Those records were further confused by Respondent's admitted failure to remove his earned fees when they were earned rather than when he had need for them in his personal and professional finances. Tr. 96-97, 112-14.

[5] In contesting this Finding, Respondent relies on DX O, Respondent's Response to Disciplinary Counsel's subpoenas dated June 21, 2016, which includes a chart at page 13 listing retainer fees deposited into his trust account from January through November 2015. This chart states the date on which each fee was received and the date on which it was earned. It also identifies the nature of the support for the date earned. DX O at 13. However, DX O and Respondent's reliance on it presents a conundrum for the Committee. We strongly credit Respondent's testimony before us and find him truthful in all matters his testimony addressed. Thus Respondent's claims regarding his June 21, 2016 submission are cast into doubt since he conceded in his testimony that in about 2007 his record keeping became haphazard and incomplete. As a result, while DX O may represent his best effort to satisfy Disciplinary Counsel's subpoena, he had no meaningful way to document when entrusted client funds became his earned fees. Respondent, for whatever reasons, operated his law practice on his obvious good intentions and his reliance on his reasonable belief that money received from clients had already been earned by him or very soon would be. A review of the documents Respondent references as support for his position shows that reconstructing an accurate accounting of when Respondent earned fees based on these records is impossible. Respondent himself could not do so. DX G, L, M, O, P. *See generally* RX 1-34. In effect, we are applying here the very basic principle for the analysis of data and conclusions premised on that data, that is, the conclusions premised on data can be no more reliable than the data itself.

13. Although Respondent had an operating account, Tr. 412-13, he often used his IOLTA to pay client costs (like motions or other filings) from his earned fees, rather than transferring the earnings into his operating account and advancing costs from there as they arose. Tr. 340-41. Respondent claimed he transferred earned fees from his IOLTA to his operating account only when he needed the money. Tr. 414-16.

14. Respondent also made cash deposits to his IOLTA account which were, in the first instance, apparently random, unexplained, and unidentified. *See, e.g.*, DX R3 at 17-18 ($100); DX R7 at 64-65 ($150); DX R10 at 90, 92 ($100). Respondent explains in his Response of June 21, 2016 that those cash deposits were each identified to a particular client. DX O. The clients are identified there as Althea Black, Monica Brown, and Barbara Pittman, and linked to the relevant cash deposits at DX O at 15 (Black), 18 (Brown), and 19 (Pittman). The first such deposit identified is "DX R3 at 17–18 ($100)" and designated to client Althea Black. *Id.* at 15. The second deposit identified is "DX R7 at 64–65 ($150)," *id*., and designated to Monica Brown. *Id.* at 18. The third deposit identified is "DX R10 at 90, 92 ($100)," designated to Barbara Pittman. *Id.* at 19. While Disciplinary Counsel is incorrect in suggesting that these deposits are ultimately "apparently random, unexplained, and unidentified," they are further examples of Respondent's failure to meet professional standards in maintaining records and management of funds received from clients.

15. The record before the Committee discloses that until the check for the benefit of Stephanie Artis bounced on October 29, 2015, no check written to or for the benefit of one of Respondent's clients had ever been dishonored. Tr. 157, 338. No client had ever complained about Respondent's handling of entrusted funds, Tr. 341, and there is no evidence that Respondent had ever been unable to comply with a client's request for funds.[6]

B. The Walker Misappropriation

16. In 2013, Respondent represented Alice Walker, who was acting as the personal representative (*i.e.*, executrix) of a family estate. Respondent represented Ms. Walker in connection with the sale of some real property belonging to the estate; and he also represented her in connection with the prosecution of two landlord tenant cases brought to collect unpaid rent from the tenant who had occupied the real property. Tr. 385-86, 398-99. On April 15, 2013, Respondent

[6] Disciplinary Counsel disputes the Findings in paragraphs 14 and 15 and points out that Respondent's failure to maintain adequate and accurate records regarding client funds limits Disciplinary Counsel's ability to rebut Respondent's testimony that Respondent credibly had a "reasonably accurate" understanding of the entrusted funds in his IOLTAs. Disciplinary Counsel also asserts that it has no independent basis to credit Respondent's testimony that no check written for the benefit of a client had ever been dishonored before the Artis case. While no independent basis exists to credit Respondent's testimony that *no* client has ever complained, it is clear that no evidence exists that any client had complained to the ODC. Further, while it is also true that no record evidence exists that Ms. Walker or Ms. Artis complained, R. Br. at 2; R. PFF ¶ 11, and, as Disciplinary Counsel points out, it is reasonable to assume that if Ms. Walker had known that Respondent had taken her $10,000 without her knowledge, she would not have been pleased, ODC Reply Br. at 14, the fact is that Respondent brought this information to the attention of Disciplinary Counsel and the Committee finds that this is more than a sufficient basis to credit Respondent's testimony in this regard. The record is silent whether he ever told Ms. Walker that he had spent her earmarked $10,000, but it is clear that Ms. Artis was made aware of the misappropriation in her case, albeit, on the initiation of these proceedings. Moreover, the record is also clear that both Ms. Artis and Ms. Walker were made whole with regard to the misappropriations in this matter.

received $121,133.99 in proceeds from the real estate sale in Ms. Walker's case, which he deposited into his SunTrust IOLTA account. RX 14; Tr. 387. Over the next year or so, he disbursed checks to multiple beneficiaries entitled to receive a share of the proceeds in accordance with the directions of Ms. Walker. RX 31, RX 31A.

17. Respondent prepared a final distribution sheet labeled "Final Report" based on his final instructions received from Ms. Walker and sent it to her. RX 31; *see* Tr. 127, 131-32. The final distribution sheet, *i.e.*, RX 31, contains 1) a list of the checks written out of the trust account to Ms. Walker and the heirs; 2) the amounts of the checks; 3) the names of the payees; 4) the check numbers; and 5) the date the checks were sent. RX 31; Tr. 391-94. The dates the checks were *cashed* are set forth in a demonstrative exhibit (RX 31A). The "date cashed" information in RX 31A is based on bank statements (RX 14 through RX 29) that record the cashing of checks—by check number and amount—in the months in which they were cashed. RX 31A also cross-references to the exhibit numbers of the trust account bank statements for the months in which each check was cashed.[7] *See* Tr. 394.

[7] Disciplinary Counsel does not credit Respondent's testimony that he sent a disbursement sheet to Ms. Walker, and no documentary or other evidence in the record supports his statements that he provided her a copy of RX 31. ODC Reply Br. at 17. In support of its challenge to Respondent's testimony, Disciplinary Counsel notes that it has seen no cover letter to accompany RX 31, which appears to be a computer printout entitled "Find Report" (not "Final Report"). *Id.* Disciplinary Counsel points out that RX 31 is dated December 2, 2016, more than three years after September 2, 2013, when Respondent claims he sent it to his client, RX 31 (upper left corner), but such a discrepancy is a routine result of automatic dating in word processing programs. *Id.* Again, the Committee strongly credits Respondent's testimony as truthful, and we

18. Ms. Walker's instructions provided for $15,373.99 of the funds placed in Respondent's trust account to be used to pay Respondent's legal fees, and $10,000 to be kept in "escrow" in case Ms. Walker's previous attorney asserted a claim for fees. RX 30; Tr. 145-46. Respondent did not withdraw his fees, choosing instead to maintain his own money in the SunTrust IOLTA with the $10,000 Ms. Walker had entrusted to him against any claim for fees from her previous attorney. *See* RX 31. The prior attorney never made a claim for further payment of fees; and the $10,000 held in reserve against that possibility should have remained in Respondent's trust account from April 2013 through July 2016. Tr. 382-83.

19. All this is set out in the Supplemental Response sent by Respondent to Disciplinary Counsel on July 22, 2016. *See* DX P. That Supplemental Response also advised Disciplinary Counsel that one of the distribution checks—the one to heir Anthony Thomas in the amount of $986.25—had never been cashed. *See id.*

20. After he discovered his error, Respondent contacted Ms. Walker and arranged to pay her the $10,000 directly. Tr. 383. Since there were insufficient funds with which to do so in his trust account, Respondent obtained a cashier's check with personal funds and delivered it to Ms. Walker. RX 32; Tr. 383-84. He also set about to ascertain Anthony Thomas's whereabouts and to arrange to make

---

would note that provision of the disbursement sheet is a trivial and non-essential fact given Respondent's position regarding the Walker matter.

a replacement payment to him of $986.25. Tr. 395-96. The funds remaining in the trust account exceeded $986.25 both in July 2016 and at the time of the hearing.[8]

21. Following satisfaction of all other claims against the entrusted funds, Respondent was obligated to maintain in his SunTrust IOLTA $10,986.25 for the benefit of Ms. Walker and Mr. Thomas.

22. On June 30, 2014, Respondent withdrew from his SunTrust IOLTA $14,444.25 which he thereafter deposited in a newly opened IOLTA at PNC. RX 28; RX 35. As set forth above, he still had not paid or otherwise distributed the $10,000 Alice Walker asked him to maintain against a possible fee claim by her first attorney. Nor had he accomplished the distribution to Anthony Thomas of his $986.25 portion of the real estate proceeds. RX 28; RX 31; RX 31A; RX 35; DX P; Tr. 391-94. The SunTrust IOLTA was closed, as of July 31, 2014. RX 29.

23. On June 30, 2014, the same day Respondent withdrew the $14,444.25, another SunTrust IOLTA check (number 1675) was presented for payment against the account in the amount of $500. RX 28. Because the entrusted funds had been removed from the account, Respondent's IOLTA had insufficient funds to cover that check. RX 28; RX 29. Thus, the overdraft did not occur because Respondent lacked adequate funds held in his trust account, but because he had changed banks. That said, the overdraft was a function of Respondent's inadequate records and is relevant here on issues of negligence and notice.

[8] Respondent asserts in his brief that a check written on the PNC IOLTA account for $986.25 has been mailed to Anthony Thomas since the hearing. R. PFF ¶ 34 n.5.

24. In addition, in the Walker matter—even after Respondent had distributed more than $100,000 of the real estate sale proceeds—he never independently provided his client a disbursement sheet to show how and where the funds went, and he lost documentary proof of a check for $70,000, other than the fact that it was cashed. Tr. 134-36. Respondent was aware that it was important to maintain disbursement sheets and accountings so that his clients would know how the money was being divided. Tr. 31. Respondent chose to rely on a document provided by Ms. Walker in 2013, Tr. 123, but that document did not accurately reflect how Respondent ultimately disbursed the sale proceeds. *See* Tr. 124-25. *Compare* RX 30, *with* RX 31 (client's and Respondent's disbursement records reflect differing payments to Michael Walker).

25. Respondent opened the PNC IOLTA on July 1, 2014, and in the next eight months, Respondent spent all but about $1,600 of Ms. Walker's and Mr. Thomas's money. DX R3 at 1 (PNC account opening documents dated July 1, 2014); DX R3 at 14 (March 2015 PNC statement reflecting balance of $1,688.85 on 3/26-3/31). *See* Appendix, *infra*.

C. The Artis Misappropriation

26. Stephanie Artis has been a client of Respondent's since approximately 2007. Tr. 459. Respondent was recommended to her by a friend, and he has handled several matters for her since then. Tr. 352; 459. Ms. Artis in turn has recommended Respondent to others. Tr. 478. Ms. Artis has been "absolutely" satisfied with Respondent's services. Tr. 471.

27. Respondent represented Ms. Artis in two related matters that came to a head in 2015. Tr. 353. First, he had filed a civil action on her behalf against her landlord in Superior Court. Tr. 460. This action sought a money judgment against the landlord because of the landlord's failure to correct housing code violations. Tr. 354. Second, Respondent defended a case brought against Ms. Artis by her landlord in Landlord Tenant Court, seeking a judgment for rent she had withheld due to the code violations subject to the first suit. DX O at 2; Tr. 353-55, 460-62.

28. The civil action resulted in a judgment for Ms. Artis that, with interest up to the time of payment, totaled $8,381.49. DX O at 2; Tr. 467. After Respondent filed for and obtained a writ of attachment against the landlord, the landlord eventually sent a check to Respondent for $8,000 dated March 26, 2015 in partial payment of the judgment. Tr. 116, 360; RX 1. Later, the landlord sent a check to Respondent for $381.49 representing the remainder of the judgment against the landlord. RX 4; Tr. 360-61, 467. The $381.49 check was dated April 27, 2015, and was deposited to the trust account on October 26, 2015. RX 4.

29. The check for $8,000 was made payable to Respondent and Ms. Artis. RX 1. On April 30, 2015, nine months after he opened the PNC IOLTA, and one month after Respondent received the check, Respondent and Ms. Artis went to the PNC bank together and deposited the check into Respondent's trust account. Tr. 356-57, 463; DX R4 at 31. At the same time, $500 in cash was taken out of the trust account and given to Ms. Artis so that she could purchase a new refrigerator. Tr. 268, 358-59, 464. The rest of the $8,000 (totaling $7,500) remained in the trust

account, and it is those remaining funds which are the subject of the charge of misappropriation of Ms. Artis's funds.

30. For reasons he did not document, Respondent waited one month to deposit the landlord's check. Tr. 116-17. From those proceeds, Ms. Artis was obligated by the settlement terms in the civil action to pay back rent to the landlord, which Respondent agreed to disburse from the entrusted funds he held. Tr. 468; DX O at 2. However, the case pending in Landlord Tenant Court had not been resolved by April 30, 2015, and the amount of back rent due was not yet known. Tr. 467-68. Respondent was obligated to calculate his fee and draw up a distribution sheet for Ms. Artis showing how the settlement funds would be disbursed. *See* DX O at 38; RX 9. Respondent's "standard" retainer agreement provides for placing a lien on "all funds coming into possession of counselor belonging to client as security for payment for services provided and disbursements advanced by counsel." RX 9; *see* Tr. 334. Respondent would thus be required to calculate how much of the funds he received to remit to his client.

31. On May 4, 2015, Respondent received a $5,500 loan from his son, Bernard Gray, Jr., who deposited it into his PNC IOLTA, after filling out a deposit slip by hand. Tr. 240-41; DX R5 at 39, 41-42. Respondent frequently borrowed money from, and loaned money to, his son—although he did not specify which account he used to fund those loans. Tr. 240-41, 246. Respondent never explained how the $5,500 loan from a non-IOLTA account ended up in Respondent's entrusted funds account. DX O at 17 (on "5/4/15," $5,500 "accidentally

deposited" by Bernard Gray, Jr. and Cassandra Gray); Tr. 242, 440-44. Respondent was unaware that the $5,500 deposit was made to his IOLTA account until Disciplinary Counsel's investigation. Tr. 242, 244. But even after "discovering" the loan in his PNC IOLTA, he left the funds there to help cover the shortfall in that account that Disciplinary Counsel was investigating. *See* Tr. 245. Respondent testified that by the time he learned of the unintentional deposit by his son of $5,500 into his trust account, he was also aware that he "had already used $9,000 that I shouldn't have used [so] I just left it there." Tr. 245.

32. The case brought by the landlord for back rent was eventually resolved by settlement. The parties agreed that the amount of the payment for back rent would be $3,848. Tr. 363-64. On October 21, 2015, Respondent wrote a check to the landlord out of his trust account for $3,848, and delivered it—or caused it to be delivered—to the landlord's attorney. RX 6; Tr. 364. At the time the check was written, there were ample funds in the trust account to cover the check. RX 13; DX R10 at 87; DX O at 3. However, if Respondent had been required in October, 2015, to make the obligated disbursements to Ms. Walker and Mr. Thomas, his account had insufficient funds to cover his obligations in the Walker case and the October 21, 2015 check to Ms. Artis's landlord. *See* Appendix, *infra*. Ms. Artis and Respondent had discussed the fee he would receive, and she requested that he reduce his fee by $1,152, which Respondent agreed to do. Tr. 481-82 (questioning by Chairman O'Malley).

33. Ms. Artis expected Respondent to disburse $3,848 to MWM Properties to comply with the settlement. Tr. 473-74. Like Ms. Walker, Ms. Artis had asked Respondent to hold extra funds in trust—here, $1,152 in addition to the $3,848 owed to the landlord—to cover unexpected payments: "That represented the $5,000 that I asked [Respondent] to deduct from the $8,000 deposit of the check, but move that over on my behalf to his client escrow account that he had on behalf of his clients regarding rent things, you know, rental payments." Tr. 467-68; *see also* Tr. 462. Ms. Artis continued: "[I]t was for possible overage of rent on top of the landlord and tenant case, it all was kind of running together. But just in case the funds I was also putting in escrow in the court were not enough, I wanted to make sure that I had enough to cover the overage of the landlord and tenant settlement of whatever I would owe to my landlord for the time that I have been withholding the rent, from the time we filed the counterclaim." Tr. 467-68.

34. As of October 21, 2015, Respondent should have had $14,834.25 in trust for Ms. Artis's landlord, Ms. Walker and Mr. Thomas ($3,848 + $10,986.25 = $14,834.25). *See* Appendix, *infra*. However, on that date, the balance in Respondent's PNC IOLTA was just $9,295.85, *i.e.*, $5,538.40 short. RX 13. The shortfall was especially extensive given that some significant part of the funds available in his trust account were commingled funds from his son's $5,500 gift. DX R5 at 39.

35. Also around October 21, 2015, Respondent deposited another check from MWM Properties for Ms. Artis, in the amount of $381.49, which cleared on

October 26, 2015. DX R10 at 94. Although MWM Properties' second check was dated April 27, 2015 (around the time Respondent deposited the $8,000 settlement check), Respondent had waited six months to cash it for reasons he did not document, but suggested, "I think it had something to do with my speaking to the attorney about the balance due." Tr. 361; *see* Tr. 119; DX R10 at 93-94.

36. On October 26, 2015, Respondent's PNC IOLTA balance was just $9,727.34, not the $14,834.25 minimum he was obligated to hold in trust. DX R10 at 87; *see* Appendix, *infra*. Respondent failed to track his IOLTA disbursements or maintain records to reconstruct account activity. Tr. 368-69.

37. On October 29, 2015, eight days after he had delivered the check, Respondent checked the current balance on his trust account and—believing that the $3,848 check sent to the landlord's attorney had already cleared—withdrew $9,000 and used the funds for his own purposes. DX R10 at 103; Tr. 365-66. In fact, the $3,848 check had not yet cleared. And as a consequence of the withdrawal of the $9,000, there were insufficient funds in the trust account to cover the $3,848 check when it was presented later that day. *Id*.

38. Although Ms. Artis expected her funds to be held in Respondent's escrow account, Tr. 462, when MWM Properties presented the check for $3,848 to PNC on October 30, 2015, the check was dishonored. DX R10 at 88. Respondent did not tell Ms. Artis about that until shortly before the disciplinary hearing, more than one year later. Tr. 470-71.

39. Shortly after the IOLTA check bounced, Respondent promptly substituted a cashier's check purchased with funds from his operating account to make Ms. Artis's back rent payment to the landlord. Tr. 366; DX O at 2. No harm resulted to Ms. Artis. Tr. 366-67. But the settlement was time-sensitive, and MWM Properties refused payment, because it now had the right to possess the property. Tr. 367. Respondent never informed his client that he had to go back to court immediately to ask for more time to pay the back rent, in an effort to salvage her settlement. DX Q; Tr. 354-55, 367, 470-71. Ms. Artis never saw Respondent's court filings asking for leave to pay her back rent late. Tr. 476-77.

40. On November 16, 2015, Ms. Artis sent Respondent an email setting out the breakdown for the $8,381.49. RX 10. The email shows the $8,381.49 that was received into the trust account. It shows the $500 for the refrigerator. It shows the $3,848 sent to the landlord for back rent. It shows an amount of $1,152 that Respondent and Ms. Artis agreed would go to Ms. Artis so that she could repay relatives who had helped her financially during the litigation. Tr. 470. And it shows an amount of $2,831 allocated to Respondent for his fees. RX 10; *see* Tr. 369-70, 474, 482.

41. The next day—November 17, 2015—Respondent sent Ms. Artis a check from his operating account for $1,152. DX O at 40.[9] Respondent could not

[9] With respect to disbursements made from Ms. Artis's funds, Respondent and Disciplinary Counsel engage in a war of semantics as to who "received" the funds. In fact, Ms. Artis's email shows 1) $500 to buy a refrigerator; 2) $3,848 to pay her back rent; and 3) $1,152 that Respondent sent her the next day. Together these total $5,500 paid to or on behalf of Ms. Artis at Ms. Artis's direction or with her agreement. RX 10; Tr. 369-372, 470-71.

make the payment from his PNC IOLTA, which only contained $1,127.34 at that time. *See* Appendix, *infra*. Even though the funds did not come from his IOLTA or from entrusted funds, Respondent wrote on the check to Artis: "From Trust . . . ." DX O at 40.

42. Despite the threat to Ms. Artis's settlement as a result of the bounced check, Respondent failed to take meaningful steps to fix how he handled entrusted funds. He resolved the problem by using his operating account to pay obligations that should have been paid with the funds entrusted to him. *See* Tr. 377 (Respondent had insufficient funds from MWM Properties to pay Ms. Artis her share of settlement so Respondent paid her from operating account but wrote "From Trust" on the check); DX O at 40.[10]

43. In the seven months from March through October 2015, the vast majority of Respondent's IOLTA deposits involved money Respondent claimed belonged to him exclusively. DX O at 13 (12 of 17 deposits "Earned when deposited"); Tr. 243-44. Yet, during that time, Respondent also held funds entrusted to him by others. In October 2015, Respondent's PNC IOLTA contained insufficient funds to cover the rent check, which was dishonored or "bounced." Respondent deposited sufficient funds to cover the dishonored check. Tr. 269-271; DX R10 at 87. Until that reversal occurred, Respondent misappropriated not only

[10] Respondent contends that this Finding of Fact, which is slightly revised from ODC PFF ¶ 33, consists mainly of argument. *See* R. Br. at 8. The thrust of the proposed finding and of our finding, is that despite what the circumstances surrounding the check to Ms. Artis's landlord disclosed about his handling of entrusted funds, "Respondent failed to take meaningful steps to fix how he handled entrusted funds." *See* ODC PFF ¶ 33.

the remaining entrusted funds held for Ms. Artis, Ms. Walker, and Mr. Thomas, but entrusted funds held for any other clients as well. *E.g.*, DX O at 13 (Thelma Cofer's $100 unearned fee); *id*. at 17 (Frank Chambers's $195 court refund). The bank notified Respondent of the dishonored check. DX R at 2-3.

44. As in the Walker matter, in Artis, Respondent lacked proper documentation, from the outset, for handling the funds he received in the case. *Compare* Tr. 336 ("Well, [Ms. Artis] paid me what I classified as a retainer, and I can't remember the date now. But then everything else that she gave me I put out from my trust account, I put out to the courts or expenses."), *with* DX O at 38 (original 2007 Artis retainer agreement for another set of cases failed to reflect Respondent received any payment at all). Respondent had represented Ms. Artis multiple times starting in 2007, Tr. 351-53; DX O at 38, and while he had no new retainer agreement in her 2015-settlement case, it was understood between them that he would represent her pursuant to their earlier agreement. Tr. 474-75. Respondent did not tell Ms. Artis how much his fee would be. Tr. 475. Because Ms. Artis was grateful for Respondent's services over the years, she was prepared to give him whatever he asked as his fee. Tr. 464.

45. The Committee credits Respondent's testimony that he generally did more work for clients than he actually charged and that he tailored his fees to his clients' ability to pay. Respondent thus felt entitled to take funds held in his IOLTA when he had a need for money, but he did so without reconciling the

withdrawals with work performed for any specific client.[11] *See* Tr. 339 (in responding generally to when he considered his advanced fee earned, Respondent testified: "it would be either when I bill them, when the case was completely over, or, like I said, when I needed the money and I thought I had completed enough work on their case to take it."). This was true in Ms. Artis's case: "Well, I had already taken funds out of the account for clients which I had earned, not knowing specifically whose clients – I mean which clients they were. And since she at that point had owed me money, I just went on and sent it out of my account so that I wouldn't have to worry about the operating – the trust account." Tr. 376-77.

46. On November 16, 2015, Respondent's PNC IOLTA contained just $1,127.34, *i.e.*, it was short $24.66. DX R11 at 107. The account reflected no withdrawals of $1,152—such as might have been paid to Ms. Artis—at any time in November 2015. *Id*. Respondent was apparently aware of the shortfall, because he paid Ms. Artis $1,152 by a check dated November 17, 2015, and numbered 1479, drawn not on his IOLTA account but on another bank account (ending in -6247). DX O at 40.

[11] It is unclear when Respondent adopted this practice which, as described and as noted by Disciplinary Counsel, included commingling his earned fees with entrusted client funds. The potential problems presented by such a practice were increased when, in or about 2007, Respondent ceased to maintain adequate records and balance his IOLTA account. We credit Respondent's testimony that he believed he had earned any funds he withdrew for his own use. Respondent's beliefs notwithstanding, his failure to maintain records and follow appropriate practices rendered his IOLTA account into something of a Ponzi scheme where funds deposited in one case supported funds earned in an earlier case.

D. Disciplinary Counsel's Investigation

47. Disciplinary Counsel received a notice of Respondent's PNC overdraft in November 2015, after the MWM Properties check bounced. DX E at 1.

48. In early 2016, Disciplinary Counsel began an investigation into the circumstances resulting in the $3,848 check being returned for insufficient funds. In January 2016, Disciplinary Counsel initially called upon Respondent to account for the activity in his account for six months, from June 1, through November 30, 2015. DX F at 2. In April 2016, Disciplinary Counsel expanded its inquiry to encompass the preceding six months (from January 1 through May 31, 2015), to capture the deposit of Ms. Artis's settlement with MWM Properties. DX M. Disciplinary Counsel issued two subpoenas to Respondent, one on January 19, 2016, and the other on April 7, 2016. DX F; DX M. The first asked for detailed information, partly in the form of interrogatory type questions, about transactions in Respondent's trust account covering the period June – November 2015. The second asked for similar information covering the period January – May 2015.

49. Respondent was unable to meaningfully comply with either the subpoenas or the request for an accounting. *See generally* DX G; DX H; DX L; Tr. 52-53. He sought multiple extensions to compile and complete his records, and to formulate his accounting. Tr. 52-53. He agreed to meet with Disciplinary Counsel to discuss an incomplete production he had made, but failed to appear. DX J; DX K. Before retaining counsel, Respondent made two substantive written

submissions to Disciplinary Counsel: one dated March 7, 2016; the other, March 18, 2016, each with some financial records. DX H; DX L. Both were incomplete and, as such, inadequate to the purpose. Tr. 78, 88. After he had retained counsel and consulted with an accountant, on June 21, 2016, Respondent made what he believed to be a complete response to both subpoenas. DX O. Respondent then informed Disciplinary Counsel in a July 2016 submission that Ms. Walker's $10,000 should have been part of the corpus of funds contained in the PNC IOLTA during the relevant period. *Id.*; *e.g.*, Tr. 71. The Committee finds that throughout his dealings with Disciplinary Counsel and these proceedings, Respondent and his counsel have been forthcoming to the extent that Respondent's inadequate records permitted.

50. Respondent claimed that some of his clients "go back to 1997," and said he "consider[s] the retainer fee is the [c]lient's money until [he] bill[s] the client," and "[s]ome clients [he] h[as] not billed and will not collect [his] fee because of the statute of limitations." DX H at 1. Respondent did not elaborate on what he meant in his reference to a statute of limitations. The difficulty in that position is that those excess funds—thus presumed to be held in trust all these years—would never have been in the PNC IOLTA, the subject of the inquiry. *See generally* DX H; DX L. In fact, Respondent never disclosed that the PNC IOLTA was a relatively new account, only about a year and a half old. DX F (January 2016 inquiry letter and subpoena); DX R (PNC IOLTA opened July 1, 2014). Instead, Respondent led Disciplinary Counsel to believe that he had been holding a

number of clients' funds in trust for many years until the overdraft in Ms. Artis's case. DX H at 1. Yet, Respondent testified that he thought he still possessed those funds, although he knew even *before* the Artis misappropriation that he had no basis to conclude he still held long-undisbursed client funds in trust—since he had not tracked disbursements to himself or others for years. Tr. 59, 65-71 (Respondent testified he was confused by Disciplinary Counsel's inquiry and subpoena). Respondent acknowledged this error repeatedly during his testimony. *E.g.*, Tr. 78.

51. Before Respondent retained counsel, he made a supplemental submission on March 18, 2016, purporting to answer Disciplinary Counsel's specifically enumerated inquiries and providing financial records purporting to support his response. DX L; Tr. 84-85. Respondent set forth names and contact information purporting to correspond with every transaction. DX L at 1-9. Respondent's Response, dated June 21, 2016, repeatedly states that he is *unable* to identify reliably the particular client associated with a particular withdrawal, whereas his earlier *pro se* responses purported to do so. *See* DX O at 15-20 (columns headed "Client"), 20 (first footnote). During questioning by Disciplinary Counsel at the hearing, Respondent testified: "All of the documents that you have in that set I sent you are incorrect." Tr. 78; *see also id.* at 88 ("And I have indicated, none of the withdrawals are accurate in the ones I submitted without assistance of counsel."); *id*. at 66-79, 89-92, 94-96, 100-03 (Respondent repeatedly

testified that information contained in submission reflected "incorrect" information in response to Disciplinary Counsel's specific inquiries).

52. After receiving Respondent's second substantive response, Disciplinary Counsel issued him a second document subpoena on April 7, 2016. DX M. The next day, on April 8, 2016, Respondent's counsel advised Disciplinary Counsel that Respondent had retained him. DX N.

53. Respondent only provided a more complete written and documentary response to Disciplinary Counsel's inquiries and subpoenas *duces tecum* with his counsel's help in June 2016. DX O. However, Respondent conceded that even with professional assistance, he could not fully account for just eleven months' worth (2015) of funds in his PNC IOLTA. DX O at 15-20. On one of the charts Respondent prepared with counsel's help in response to Disciplinary Counsel's inquiry, for multiple entries, Respondent admitted he did not know what client was associated with the funds he claimed to have earned. *Id*. (in identifying which clients associated with withdrawals of "fees earned," Respondent marked multiple entries "Uncertain").

54. Respondent then went back voluntarily and looked at his trust account bank records for 2013 and 2014—years preceding the ones covered by Disciplinary Counsel's subpoenas. In doing so, Respondent came upon a transaction that brought back to mind a matter involving client Alice Walker and a $10,000 amount that should still have been in his trust account, but was not. DX P; Tr. 140, 151, 379-383.

55. Thereafter, Respondent reported to Disciplinary Counsel in July 2016 that he had just discovered the misappropriation of Ms. Walker's and Mr. Thomas's $10,986.25—only after Disciplinary Counsel began its investigation of the Artis misappropriation, Tr. 150-51, and only after he retained counsel, DX P at 2-3. This discovery largely invalidated the (earlier) June 2016 submission made with counsel's help, because the June 2016 submission reflected no funds or transactions associated with the Walker matter. He also purchased, with personal funds, a cashier's check payable to Alice Walker for $10,000 and delivered it to Ms. Walker. Tr. 383-84; RX 32; DX P at 2-3. Moreover, he decided not to withdraw any further funds from the trust account between discovering the misappropriation and the date of the hearing. Tr. 399, 432.[12]

56. In his July 22, 2016 submission, Respondent provided documentary evidence that two days earlier, he had paid Alice Walker the funds he had misappropriated. DX P at 2; RX 32. He did so from an account other than either of the two IOLTAs. RX 32; Tr. 383 (Respondent got funds from wife's account). However, as of the hearing, Respondent had not paid Anthony Thomas the $986.25, and was unsure of the source of funds he would use to do so. Tr. 396, 432-33. He also had not tracked down Mr. Thomas's original check. Tr. 429-430.

D. Respondent's Testimony

57. Respondent contended that he stopped tracking and documenting financial information associated with his law practice in 2007 in any meaningful

[12] Respondent asserts in his brief that he withdrew funds from the trust account to pay $986.25 to Mr. Thomas after the hearing. R. PFF ¶ 34 n.5.

way because his practice became too busy and due to some health challenges at that time. Tr. 59-60, 348.

58. When asked by his counsel or the Hearing Committee what the size of his practice was generally, Respondent testified that it was anywhere from 1,100 to 1,500 clients over the life of his law firm. Tr. 26, 333, 403. When the Hearing Committee asked how many cases Respondent currently had (*i.e.*, in 2016), Respondent answered without hesitation "five to six cases," pending his "supposed[]" retirement. Tr. 405. When Disciplinary Counsel asked whether Respondent could give a reasonable guesstimate of the size of his practice in 2014-15, he testified simply, "No," claiming any answer would not be accurate. *Id.*

59. When asked by his counsel or the Hearing Committee about having had a stroke and bypass surgery, Respondent estimated that he had the stroke in 1999 and heart bypass surgery in 2000, "sometime after the stroke." Tr. 348-49; *see also* Tr. 153 (Respondent estimates bypass was "like 2004"); RX 34 (Respondent's doctor's memorandum reflects the bypass surgery occurred in 2008). When asked by Disciplinary Counsel to confirm that neither the stroke nor heart surgery happened during the time of the Walker and Artis misappropriations, Respondent was not able to recall when those health conditions occurred:

> Q: You referred to a stroke and bypass surgery. But none of that happened in 2012, 2013, 2014, '15 or '16; correct?
>
> A: At this point I cannot tell you the exact dates. but I had – but they are a continuing problem. I still have fainting spells. I don't necessarily have problem with my heart except when I run. I can take exercises, I can walk, but I can't run. So they are continuing problems.

Q: Let me ask again. Did you have bypass surgery in 2012?

A: I think it was a little earlier, but I don't know.

Q: Did you have a stroke in 2012?

A: I do not know when the stroke occurred. I'm going to give you that information.

Tr. 417; *see also* Tr. 60. However, the dates, to the extent they are known, are set forth by Respondent's doctor in RX 34, and they do not reflect a stroke or bypass surgery during the events at issue here.

60. Neither Respondent's stroke nor bypass surgery happened in 2013, 2014, or 2015, when the known misappropriations occurred. Tr. 60-61. His heart surgery happened in 2008; his "mini-stroke" likely happened "prior to 2000." RX 34.

61. Respondent also testified that he had handled only three or four settlements in his career of nearly four decades. Tr. 25, 344. Of the two he could specifically remember—Walker and Artis—Respondent did not track the funds properly in either of them. Tr. 112-13.

62. Respondent was "not aware" that nearly $11,000 he was supposed to hold for Ms. Walker and Mr. Thomas was missing, although he had spent their money in little more than a year. *See* Tr. 150-52. Even in Respondent's June 22, 2016 submission through counsel, he made the untrue statement that "[t]he only client whose settlement funds were contained in the account during the period in question was Stephanie Artis." DX O at 5. The PNC IOLTA contained—or

should have contained—some portion of Ms. Walker's and Mr. Thomas's entrusted funds, but Respondent forgot the $10,000 his client specifically asked him to hold sacrosanct (and the additional $986.25 to be disbursed to Mr. Thomas). *See* DX O at 15-21 (no mention of either Alice Walker or Anthony Thomas when identifying clients whose funds contained in PNC IOLTA from January through November 2015).

63. According to Respondent, he did not remember that he was holding Ms. Walker's and Mr. Thomas's funds until after his counsel helped him try to sort out the PNC IOLTA. DX P; *see* Tr. 152, 155. Respondent's July 22, 2016 submission rendered the prior June 21, 2016 submission complete and accurate.

64. Respondent contended that he had a "reasonably accurate understanding" of what his trust accounts held. Tr. 184-85; DX O at 3. Yet, he also claimed he did not know the $5,500 from his son was in the PNC IOLTA, Tr. 444; he did not know how much that account should have contained when he withdrew $9,000, nearly tanking Ms. Artis's settlement, *see* Tr. 187-193; he did not know the fate of Anthony Thomas's $986.25 check, Tr. 429-430; and he contended that he did not realize that he spent all but $1,600 of Alice Walker's $10,000, DX P at 2.

65. Respondent wrote to Disciplinary Counsel and testified that he knew of these transactions set forth above because at some point after Disciplinary Counsel began its investigation in the Artis misappropriation case, he was put on notice that his failure to keep records of his trust account activity had resulted in an

unintended misappropriation—he chose to conduct his own further investigation and report his findings to Disciplinary Counsel. *E.g.*, DX P at 2-3; Tr. 444; *see* Tr. 429.

66. As of the hearing date, even after he most recently overdrew the PNC IOLTA in Ms. Artis's matter, Respondent did not know who the current funds belong to, despite the small amount of money in the account. Tr. 432.

67. Respondent conceded that he engaged in misappropriation. *See* DX C at 3.

68. While it is true that no record evidence showed that Respondent had implemented any systems to address the overdrafts, commingling, lack of recordkeeping, and misappropriations that occurred in both his IOLTAs, Respondent testified that he had determined to refrain from withdrawing any money for himself and that it was his intention to retire from the practice of law. *See* Tr. 339, 409, 432.

III. CONCLUSIONS OF LAW

The Hearing Committee concludes that as a matter of law Respondent negligently misappropriated funds entrusted to him in his representation of Ms. Artis and Ms. Walker, commingled those funds with his own funds, and failed to keep complete records of client funds, in violation of Rule 1.15(a), but that he did not seriously interfere with the administration of justice in Disciplinary Counsel's investigation of the Artis matter in violation of Rule 8.4(d).

A. Violations of Rule 1.15(a)

Disciplinary Counsel charged Respondent with two counts of misappropriating entrusted client funds, in violation of Rule 1.15(a). We are required separately to consider first whether a misappropriation occurred (i.e., whether Respondent took client funds without authorization), and then consider Respondent's state of mind (i.e., whether the misappropriation was intentional, reckless, or merely negligent).

Misappropriation is defined as "any unauthorized use of client[] [or third party] funds entrusted to [the 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) (citation and quotation marks omitted). Misappropriation occurs when a respondent withdraws entrusted funds without the client's consent. *In re Thompson*, 583 A.2d 1006, 1010 (D.C. 1990) (per curiam) (appended Board Report). Misappropriation also occurs where the balance in the attorney's account falls below the amount due to the client or third party, regardless of whether the attorney acted with an improper intent. *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) (appended Board Report); *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)).

Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See In re Anderson*, 778 A.2d 330,

339 (D.C. 2001) ("*Anderson I*") (citations omitted) (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own"). Misappropriation is reckless when the attorney's conduct "reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds." *Id.* at 338. "[N]egligent misappropriation cases generally have involved single, or discrete, inadvertent or negligent acts." *In re Carlson*, 802 A.2d 341, 351 n.12 (D.C. 2002). In misappropriation cases, Disciplinary Counsel has the burden to prove "by clear and convincing evidence" not only that a misappropriation had occurred, but also the level of the attorney's intent, that is, intentional, reckless, or negligent. *Anderson I*, 778 A.2d at 335-38.

Rule 1.15(a) also prohibits commingling. Commingling occurs when an attorney fails to hold entrusted funds in an account separate from his own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) (appended Board Report). Thus, "commingling is established 'when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims of its creditors.'" *In re Malalah*, Board Docket No. 12-BD-038 (BPR Dec. 31, 2013), appended Hearing Committee Report at 12 (quoting *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988) (appended Board Report)). To establish commingling, the entrusted and non-entrusted funds must be in the same account at the same time. "The rule against commingling has three principal objectives: to preserve the identity of client funds, to eliminate the risk that client funds might be taken by

the attorney's creditors, and most importantly, to prevent lawyers from misusing/misappropriating client funds, whether intentionally or inadvertently." *In re Rivlin*, 856 A.2d 1086, 1095 (D.C.2004) (per curiam) (appended Board Report).

Disciplinary Counsel asserts, Respondent concedes, and the Committee finds that Respondent misappropriated client funds entrusted to him and commingled client funds with his own funds. *See* Amended Answer at 3; R. Br. at 14. As shown in the Appendix, *infra*, between January and November 2015, Respondent's IOLTA account contained less than the amount he was required to hold on behalf of Ms. Walker and Ms. Artis because Respondent frequently withdrew funds from those accounts for his personal use. *See also* FF 37, 40. Misappropriation having been established, the Hearing Committee must determine whether such misappropriation was intentional, reckless, or simply negligent. Disciplinary Counsel makes no argument that the misappropriation under review here is intentional and contends strongly that Respondent's misappropriation was reckless. Respondent argues that his misappropriation was merely negligent. We agree that on the record before us the question presented is whether Respondent's misappropriation was reckless or simply negligent.

Disciplinary Counsel stresses certain facts in arguing that Respondent was reckless. First, by 2007-08 Respondent had stopped keeping and reviewing financial records or tracking his retainers, earned fees, and his clients' escrowed funds. *See* ODC Br. at 1, 30. Second, while he maintained a trust account during that time, he failed to record his deposits and withdrawals. *Id.* at 1. Respondent

concedes these facts. Disciplinary Counsel further alleges that Respondent's handling of funds in his trust account during that period amounted to generally treating funds in the trust account as his own funds. *Id.* Disciplinary Counsel notes that Respondent acknowledges he believed that most, if not all, of the funds in his trust account, when deposited, had already been earned by him. *Id.* Believing he had an accurate understanding of the funds in his trust account and failing to maintain accurate records (at least since 2007), Respondent lost track of over $10,000 he had agreed to hold for Ms. Walker, and bounced a $3,848 check to Ms. Artis's landlord because he had simply assumed the check had cleared before he withdrew funds. FF 43, 62. He withdrew funds when he needed the money without distinguishing his own money from his clients' by transferring his funds to his operating account. FF 13. When he overdrew his trust accounts, he ignored the problems thus highlighted and made payments or deposits to his trust accounts from his operating or other accounts. FF 39, 42. In fact, he had almost no recollection of the relevant dates or amounts for retainers or earnings. FF 44. Central to Disciplinary Counsel's argument in this regard was Respondent's inability to provide records in response to its initial subpoenas and, in response to those subpoenas, his efforts to create those records without sufficiently noticing Disciplinary Counsel. *See* ODC Br. at 28.

Respondent concedes that he misappropriated client funds but argues that he did not do so intentionally or recklessly. R. Br. at 3. Respondent makes clear in his brief, as he did in closing arguments before the Committee, that he is closing

his practice and actively working toward retirement. He seeks only to avoid the stigma of disbarment at the close of his career in the law. *See* Tr. 527-531.

Discussion

Rule 1.15 states, in relevant part,

> (a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Disciplinary Counsel charges that Respondent violated this Rule by commingling funds, that is, failing to keep separate client funds from his own funds. Disciplinary Counsel further contends that Respondent failed, over an extended period of time, to maintain complete records of entrusted funds.

Disciplinary Counsel did not separately argue in its brief that Respondent committed commingling or failed to keep complete records of entrusted funds, which are two separate violations of Rule 1.15(a) charged in the Amended Petition. Nevertheless, Respondent admitted to these violations, and the Committee finds that there is an adequate basis in the record to support them. *See* FF 10-12, 34, 36.

Turning to misappropriation, in view of the charges here, the Committee believes it is necessary to consider the nature of Respondent's practice. The evidence discloses that the majority of Respondent's clients are persons of low or moderate income who have not the resources to make a significant payment to

Respondent, which Respondent would then deposit in an appropriate IOLTA against which he could draw for legitimate litigation expenses and to pay himself as some or all of those funds were earned. Rather, to accommodate his clients' financial limitations, Respondent's retainers with such clients provided that the clients would make regular payments to Respondent against an agreed upon total fee until that fee was paid in full. Respondent's practice, and thus his clients' legal matters, involved landlord-tenant problems in low income housing in the less affluent areas of the District.[13]

There were several consequences of this somewhat unorthodox fee practice. First, the clients' legal problems were generally resolved or in any event the fee was totally earned long before the client made final payment to Respondent of his agreed fee. Thus, over some period of time, the client's matter having been resolved, all the client's payments were earned fees. Respondent's financial practices then complicated matters even further. Instead of then depositing payments from clients whose matters were no longer subject to charges to his operating account, Respondent deposited all income, regardless of the status the matter that generated that income, into his IOLTA. In those instances where the deposited funds were generated by a judgment, Respondent was generally able to

[13] There are significant legal resources available to persons such as those who comprised Respondent's clientele; there is also a significant portion of that community who, with regard to legal representation, believe that "You get what you pay for." Thus, there is a need for attorneys such as Respondent who will accommodate the client's financial requirements and provide legal services to such clients. It should be noted that attorneys like Respondent assume some financial risk that services rendered to an unsatisfactory result before the fee is paid in full may result in a cessation of payments. Such risks are why criminal defense counsel collect their whole fee in advance of entering their appearance.

identify those funds and account for them. If the funds were generated by a fee, Respondent was not able to account for their origin. He maintained no records of the source of such funds when he deposited them.

Finally, Respondent's fee practices had one other significant aspect. Because he deposited nearly all funds received into his IOLTA, regardless of their status as client funds or earned fees, when Respondent had need for funds for personal and professional expenses, he withdrew money from his IOLTA. In doing so, Respondent asserted that he had a reasonable belief that the funds he was withdrawing were funds already earned. The Committee credits Respondent's testimony that he had a reasonable and factually based sense of how much of the money in his IOLTA constituted earned fees, that is, we believe that Respondent had a good faith belief that the funds he withdrew from his IOLTA were funds he had earned. As we will discuss, *infra*, the accuracy of his belief is open to debate.

Disciplinary Counsel asserts, and the evidence bears out, that however reasonable Respondent's belief, it was inaccurate. Respondent testified that sometime in 2007 he experienced health problems and at that point fell behind in monitoring his IOLTA. FF 57. While the origin of Respondent's problem is of significance in consideration of Respondent's defense of negligence, in Disciplinary Counsel's view, Respondent's continued financial and professional irresponsibility over an extended period of time, whatever its origin, was the cause of that inaccuracy and renders his claim of simple negligence ineffective. *See* ODC PFF ¶ 9.

In considering Respondent's charges and the contentions of the parties, the Committee found compelling Respondent's service to a part of our community which many would argue is underserved and without access to many services most of us take for granted, in part because we have ready access to them. These range from supermarkets to medical services and, most relevant here, legal services. Many in the Bar seek to provide legal services to those portions of our community but Respondent did so daily throughout his career before the Bar. We also found compelling Respondent's limited request to simply avoid disbarment at the end of his career in the law. We are unanimous in our hope that the Board will respect his wish.

While it might be appropriate to suggest that the evidence we find so compelling is relevant only to mitigation, we find it relevant to intent and clearly establishing that Respondent did not recklessly or intentionally misappropriate client funds. The answer to the question of intent is critical in this matter for if Respondent was reckless, the presumptive sanction is disbarment, and given precedent in this regard, it would be difficult to recommend a sanction of suspension. The Committee finds this to be evidence of intent because in large part the misappropriations herein resulted from Respondent's accommodations to the financial restrictions of the majority of his clientele. Thus, we see his service and the accommodations he made to render that service as both evidence of his intent and evidence in mitigation.

In determining whether a respondent's unauthorized use of funds was reckless, one must ascertain whether the act "reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds . . . . " *Anderson I*, 778 A.2d at 338; *see also id.* at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action . . . ." (internal citations and quotation marks omitted)). The Court has further explained that reckless misappropriation occurs where an attorney handles entrusted funds "in a way that reveals . . . a conscious indifference to the consequences of his behavior for the security of the funds." *Id.* at 339 (citations omitted). Further, "[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to *any reasonable person*." *Id.* (internal citations and quotation marks omitted). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless.

The Court has identified the following "hallmarks" of reckless misappropriation:

> [T]he 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.

Id. at 338.

Negligent misappropriation generally occurs where a respondent is mistaken as to a question of law or fact. 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, 16-BG-700, slip op. at 14 (D.C. Sept. 21, 2017) (citations omitted). "[N]egligent misappropriation cases generally have involved single, or discrete, inadvertent or negligent acts." *Carlson*, 802 A.2d at 351 n.12. It falls to the Committee then to determine if the misappropriation here "was inadvertent or the result of simple negligence." *Anderson I*, 778 A.2d at 339.

Given the facts in this matter, Respondent's misappropriations here are clearly, and concededly, the result of inadequate record keeping on his part. There are two lines of cases relevant to our determination, the *Anderson/Edwards* line,[14] and the *Micheel*/*Pels* line.[15]

In *Anderson I*, the Court held that Disciplinary Counsel cannot prove recklessness by establishing "inadequate record-keeping alone combined with commingling and misappropriation." *Anderson I*, 778 A.2d at 340. Thus, in *Anderson I*, the attorney had virtually no recordkeeping system to track client

[14] *See Anderson I*, *supra*, and *Edwards*, *supra.*

[15] *See In re Pels*, 653 A.2d 388, 394 (D.C. 1995); *In re Micheel*, 610 A.2d 231, 234-35 (D.C. 1992).

funds and "kept no separate trust or escrow account nor ledgers or books reflecting receipts and disbursements." *Id.* at 333. Rather, the respondent used cashier's checks to pay settlement funds to clients, tried to keep track of each case in his head, and made notations in the client file as to who had been paid. *Id.* As a result of this slipshod system, the respondent failed to pay a third-party medical provider because he mistakenly believed that he already had, and the balance in his account fell below the amount due to the provider. *Id.* at 332-33. The Court found that this constituted negligent misappropriation. *Id.* at 339-342. *See also Edwards*, 870 A.2d at 92-93 (finding negligent misappropriation where the respondent's "mishandling of client funds was a product of confusion and disorganization within her office").

These cases are distinguishable from the *Micheel*/*Pels* line of cases in which the Court found reckless misappropriation where the unauthorized use occurred as a consequence of failure to keep track of client funds, commingling of personal or business funds with client funds, *and* the indiscriminate writing and bouncing of checks on the account in which the funds were being held.[16] *See Pels*, 653 A.2d at 395-97; *Micheel*, 610 A.2d at 235, 236. Although the respondents in *Anderson I* and *Edwards* commingled personal funds with client funds and failed to keep track

[16] It is important to note that Respondent was first noticed by Disciplinary Counsel (and his bank) that there was a problem with his IOLTA account when the overdrafts occurred in the Artis matter. There was no notice regarding the Walker matter until Respondent's counsel brought that matter to the attention of Disciplinary Counsel after Respondent had been charged in the initial Specification of Charges. Thus, we believe Respondent did not engage in the indiscriminate "[writing of] checks on the account at a time when he knew or should have known that the account was overdrawn." *Micheel*, 610 A.2d at 236.

of client funds, there was no evidence that they indiscriminately wrote and bounced checks on their accounts like the respondents in *Micheel* and *Pels*.

In *Micheel*, the balance in the respondent's account dropped below the amount that respondent was supposed to pay to state and county authorities for taxes and fees due as a result of his client's purchase of a house. *Micheel*, 610 A.2d at 232-33. The respondent presented two checks to pay these taxes and fees, but both were dishonored due to insufficient funds. *Id.* at 233. Subsequent to the presentation of the second dishonored check, the respondent bounced thirteen other checks drawn on the account and wrote numerous additional checks for business and personal expenses that did not bounce. *Id.* In addition, the respondent admitted that he had commingled personal funds with entrusted funds. *Id.* The Court found that the misappropriation was reckless, because the respondent "knowingly and intentionally commingled his client's funds with his own, even though he knew that to do so was improper"; "made no attempt to keep track of his client's funds"; and "indiscriminately wrote checks on the account at a time when he knew or should have known that the account was overdrawn." *Id.* at 235-36.

Similarly, in *In re Pels*, 665 A.2d 388 (D.C. 1995), the respondent deposited a settlement check and made a distribution to his client. *Id.* at 390. The respondent was obligated to hold some of the remaining settlement proceeds in trust to pay the client's medical bills. *Id.* However, the respondent "wrote a large number of checks from the account for family and personal expenses as well as for business-related expenses." *Id.* Consequently, the amount in the respondent's

checking account fell below the amounts needed to pay the medical providers. *Id.* In finding this unauthorized use reckless, the Court observed that the respondent had "indiscriminate[ly] mingl[ed] . . . personal and client funds" in the account over the course of almost a year, drawn "a great many personal and unrelated business checks" on the account, and that his conduct "was marked by a pervasive failure to maintain contemporaneous records . . . . " *Id.* at 395-97.

The Committee, after consideration of all the evidence and arguments, finds that Respondent was simply negligent. The misappropriations alleged in the Specification of Charges were a function of the unusual nature of his practice, which was meant to accommodate the financial circumstances of the clients he represented, and Respondent's illness. Specifically, we are referring to the confusion created by Respondent's fee practices and his apparent inability to maintain the more detailed records that would be necessary to avoid negligent misappropriations.[17]

B. No Violation of Rule 8.4(d)

We recognize that it is critical to Disciplinary Counsel's function that when it determines in the exercise of its discretion to investigate attorney conduct it should have available to it all the records and materials in a member's possession which our Rules require a member to maintain. We believe that charges pursuant to Rule 8.4(d) would be appropriate if the member's failure to maintain or provide those records somehow prohibited a professional and legally sufficient resolution

[17] It is important to note that in order to provide the "bargain services" he afforded his clientele, Respondent reduced his overhead by operating from his home and engaging no support staff.

of that investigation. We read Rule 8.4(d) and the comments to Rule 8.4 to address generally affirmative[18] acts which interfere with the administration of justice. We note that Rule 1.15 in its very first paragraph creates an affirmative duty to keep and maintain such records and specifically describes the period for which counsel must maintain those records.[19] Consequently, we do not believe that Respondent's failure to maintain the records required by Rule 1.15(a) constitutes interference with the administration of justice within the meaning of Rule 8.4. Further, even assuming that such conduct were to be determined properly addressed by charges pursuant to Rule 8.4, we consider the conduct so charged to have had no significant adverse effect given that Disciplinary Counsel and Respondent's counsel were able to complete an investigation of sufficient scope to support all the charges in of violations of Rule 1.15(a).

IV. SANCTION

The appropriate sanction is one that is necessary to protect the public and the courts, to maintain the integrity of the profession, and to deter Respondent and other attorneys from engaging in similar misconduct. *See In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013) (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007)). The sanction imposed must also be consistent with cases involving comparable

[18] We recognize that the examples in those comments are not all affirmative acts. For example, they include an attorney's failure to respond to subpoenas or orders, but they do seem to require that the attorneys charged conduct be intended to interfere with administration of justice.

[19] "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Rule 1.15(a).

misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining the appropriate sanction for Respondent's negligent misappropriation of client funds, as well as the commingling and record-keeping violations, the Committee considered several cases. "[T]he ordinary sanction for negligent misappropriation would not exceed suspension for six months . . . ." *In re Kline*, 11 A.3d 261, 265 (D.C. 2011) (citing *In re Fair*, 780 A.2d 1106, 1115 (D.C. 2001) and *Anderson I*, 778 A.2d at 332). In *In re Choroszej*, 624 A.2d 434 (D.C. 1992), the Court imposed a six-month suspension for negligent misappropriation where the attorney paid the disputed amount after being contacted by Disciplinary Counsel. In the instant matter, not only were the clients immediately reimbursed (after Respondent was aware of the misappropriation), but Respondent in fact notified Disciplinary Counsel of a violation of which Disciplinary Counsel was not previously aware. Disciplinary Counsel argues that Respondent's initial efforts to respond to Disciplinary Counsel's inquiries when the investigation was opened constituted an effort to mislead Disciplinary Counsel. Rather, the Committee finds that Respondent's efforts were a good faith attempt to respond to those inquiries which, when unsuccessful, resulted in newly retained counsel's admission to Disciplinary Counsel and disclosure of the negligent misappropriation of the Walker funds.

After contemplation and due consideration of the precedents in this regard, the Committee recommends that Respondent be suspended for six months with a

CLE condition to his reinstatement. Such a sanction seems right and just, fitting and proper under the circumstances presented here. To date, Respondent has been moderately paid for rendering selfless service to a portion of our community not generally served by more established elements of the Bar. He rendered that service under financial circumstances designed to accommodate the peculiar requirements of those clients—and the Committee is convinced of Respondent's good faith—and it was those circumstances and his accommodation to them which gave rise to the misappropriations in this matter. He has admitted his error and seeks suspension not to minimize any loss of income but rather to go to his grave a member of the Bar.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rule 1.15(a), and should receive the sanction of six months' suspension with reinstatement conditioned upon the successful completion of an ethics-related CLE course approved by Disciplinary Counsel relating to the care and custody of entrusted funds and the management of a law office. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar Rule XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar Rule XI, § 16(c).

AD HOC HEARING COMMITTEE

/WJO/
William J. O'Malley, Jr., Chair

/JK/
Joel Kavet, Public Member

/MLP/
Malcolm L. Pritzker, Attorney Member

October 12, 2017

APPENDIX: TRACKING ENTRUSTED FUNDS[20]

Date	Event	Entrusted from Walker	Entrusted from Artis	Total entrusted	Trust balance[21]
4/15/13	Proceeds from Walker real estate sale deposited	$121,133.99	*$0*	$121,133.99	$125,985.01
Sept/Oct 2013	Respondent pays claims against entrusted funds, leaving $10,000 held on behalf of Walker and $986.25 held on behalf of Thomas	$10,986.25	*$0*	$10,986.25	$99,177.12 (as of 10/31/13)
6/30/14	Respondent moves trust account from SunTrust to PNC	$10,986.25	*$0*	$10,986.25	$14,444.25 (withdrawn from SunTrust)
1/1/15	PNC bank statement shows opening balance below amount entrusted	$10,986.25	*$0*	$10,986.25	$5,327.85
3/26/15	Artis landlord sends Respondent a check for $8,000 in partial payment of judgment	$10,986.25	$8,000 (not deposited)	$18,986.25 ($10,986.25 deposited in trust)	$1,688.85
4/27/15	Artis landlord sends check for remaining amount owed ($381.49)	$10,986.25	$8,381.49 (not deposited)	$19,367.74 ($10,986.25 deposited in trust)	$1,188.85
4/30/15	Respondent deposits Artis landlord's $8,000 check into PNC IOLTA	$10,986.25	$8,381.49 ($8,000 deposited)	$19,367.74 ($18,986.25 deposited in trust)	$9,233.85
4/30/15	Respondent withdraws $500 on behalf of Artis	$10,986.25	$7,881.49 ($7,500 deposited)	$18,867.74 ($18,486.25 deposited)	$9,233.85
5/4/15	Respondent's son deposits $5,500 into PNC IOLTA	$10,986.25	$7,881.49 ($7,500 deposited)	$18,867.74 ($18,486.25 deposited)	$14,638.85
10/21/15	Respondent writes $3,848 check to Artis landlord for back rent.	$10,986.25	$7,881.49 ($7,500 deposited)	$18,867.74 ($18,486.25 deposited)	$9,295.85

[20] This chart was compiled using the Findings of Fact above, as well as the bank records contained in DX R1-R11 and RX 12-29.

[21] The trust account balance on any given day reflects minor transactions not included in this chart. Underlined balances indicate those that are below the amount required to be held in trust.

Date	Event	Entrusted from Walker	Entrusted from Artis	Total entrusted	Trust balance
10/26/15	Respondent deposits Artis landlord's $381.49 check into PNC IOLTA	$10,986.25	$7,881.49	$18,867.74	$9,727.34
10/29/15	Respondent withdraws $9,000	$10,986.25	$7,881.49	$18,867.74	$3,120.66
10/29/15	Landlord deposits back rent check for $3,848, causes overdraft	$10,986.25	$4,033.49	$15,019.74	-*$727.34*[22]
10/30/15	Payment is reversed due to overdraft	$10,986.25	$7,881.49	$18,867.74	$1,127.34
11/3/15	Respondent withdraws $3,848 from his personal bank account to pay Artis landlord	$10,986.25	$4,033.49	$15,019.74	$1,127.34
11/16/15	Artis states that Respondent can take $2,831 as attorney's fees, leaving a trust balance of $1,152	$10,986.25	$1,152	$12,138.25	$1,127.34
11/17/15	Respondent pays Artis $1,152 via check from a personal bank account	$10,986.25	*$0*	$10,986.25	$1,127.34
7/18/16	Respondent pays Walker amount entrusted on her behalf, leaving only the amount owed Thomas	$986.25	*$0*	$986.25	$1,600 (approx.)

[22] This amount reflects the subtraction of the $3,848 check from the October 29 balance of $3,120.66 reflected in DX R10.